

(21,403.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 285.

RAFAEL ENRIQUEZ, IN HIS OWN NAME AND AS
ADMINISTRATOR OF THE ESTATE OF ANTONIO
ENRIQUEZ, DECEASED, ET AL., APPELLANTS,

vs.

FRANCISCO SAEZ GO-TIONGCO, FLORENCIA VICTORIA,
FRANCISCO ENRIQUEZ, AND CHO JAN-LING.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 THE UNITED STATES OF AMERICA.
Philippine Islands:

R. G. No. 3502.

RAFAEL ENRIQUEZ, for Himself and as Administrator of the Estate of Antonio Enriquez y Sequera, Deceased; Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudes Enriquez, and Antonio Gascon, a Minor, Plaintiffs and Appellants,

versus

FRANCISCO SAEZ GO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO ENRIQUEZ, and CHO JANLING, Defendants and Appellees.

Nullity of an Executive Action.

Be it remembered, That the following proceedings were had in the Court of First Instance of the City of Manila, P. I., and the Supreme Court of the Philippine Islands in the above entitled cause, to-wit:

On the 21st of September, 1900, an original complaint was filed in the then Court of First Instance of the District of Binondo, City of Manila, P. I., by Rafael Enriquez, the plaintiff herein, in his own behalf, and in behalf of the other plaintiffs in this case, against Florencia Victoria, plaintiff being represented by his counsel, Felipe G. Calderon, which complaint was in the words and figures following, to-wit:

2 In the Court of First Instance of the City of Manila.

Felipe Calderon, a practicing attorney, in behalf of Rafael Enriquez and his brothers and sisters, by virtue and under a power of attorney hereto attached and numbered one, which power of attorney I make oath has not been revoked or suspended, appears and respectfully states to the Court; That in pursuance of the instructions contained in the said power of attorney, and in accordance with section 1461 of the Code of Civil Procedure, I do hereby institute this declarative action against Florencia Victoria Mendoza, the surviving wife and testamentary executrix of Jose Moreno Lacalle, and herewith file this my complaint upon the following grounds:

Facts.

1. Upon the death of Antonio Enriquez and his wife, Cirilca Villanueva, differences arose, followed by litigation, between Francisco Enriquez as executor and co-participant, and Rafael Enriquez and his brothers and sisters as to their respective rights in the estates of the said spouses.

2. Both parties being willing to settle in an amicable manner such differences, entered upon an agreement which was executed on the

22nd of April, 1891, before the notary public of this City, Abraham Garcia y Garcia (document number two) wherein it was stipulated that the partition of the estates in question should be made by Jose J. de Icaza, designated by Francisco Enriquez, and Jose Moreno Lacalle, appointed by Rafael Enriquez.

3 It was further stipulated in the said agreement that all differences which might arise between the participants in the said estate should be submitted to the decision of friendly arbitrators if they referred to questions of title, and to arbitrators or umpires if they referred to questions of law, and for this purpose they appointed Messrs. Icaza, Moreno Lacalle and Cayetano Arellano, as such.

3. Before the final examination and approval of the inventory which the parties had a right to make upon the accounts to be rendered by the said executor, Francisco Enriquez, Jose J. de Icaza died.

4. Upon the death of Mr. Icaza, Moreno Lacalle wrote to my client a letter, dated the 19th of August, 1896, a copy of which is hereto attached and numbered three, wherein he expressed his desire that the amount of the fee which he was to receive for his professional services from the beginning to the final settlement of the partition of the estates in question should be then determined or ascertained, suggesting at the same time that such fee be computed on the basis of two and one-half per cent of the total value of the estate.

5. That subsequent to this letter the said Moreno Lacalle suggested that my client, together with Francisco Enriquez and Antonio Enriquez, execute a new agreement amending the previous one, and stipulating anew the basis upon which the partition proceedings and distribution of the estate among the interested parties should be conducted.

6. My clients, following the suggestion of Mr. Lacalle, executed a new agreement in this City on the twenty-fifth of August, of the said year, 1896, before the notary public Jose Engracio Monroy (document number two above-cited), the basis of which, as well as the designation and appointment of Mr. Arellano to decide such questions as might arise from objections made by the contracting parties, were suggested by Moreno Lacalle, himself, who was appointed to pass with Mr. Arellano upon such differences as might arise between the interested parties with reference to the accounts to be rendered by Francisco Enriquez as the executor of the estates, the subjects of the partition in question, Mr. Lacalle having assured Mr. Rafael Enriquez that Mr. Arellano had accepted the trust conferred upon him, relying, perhaps, upon the professional relations and intimate friendship existing between them; and it was upon this representation on the part of Mr. Lacalle that my client and Antonio Enriquez executed the aforesaid agreement.

7. Francisco Enriquez being required to render an account of his administration as executor of the estates in question for the period from 1884 to 1895, and the first half of the year 1896, and also as attorney in fact of the deceased, Antonio Enriquez, for the year

1883, the manner in which such accounts should be rendered and approved was provided for in the said agreement.

8. Notwithstanding the provision in the said agreement that any objections made either by my client or Antonio Enriquez, should they fail to arrive at an understanding, should be decided by Messrs. Lacalle and Arellano, Mr. Lacalle, in violation of such provision, disregarded the objections made by the parties and the inventory was made behind closed doors between himself and the executor.

9. My client, according to the demands and persuasions of Mr. Lacalle, and being anxious to avoid at any cost the litigation which against his will he now maintains against Francisco Enriquez, signed with Antonio Enriquez the inventory in question.

My client then asked for an explanation of some of the items of the inventory and of certain omissions made by Francisco Enriquez, and which the latter refused to correct, and called upon Mr. Arellano, who, with Moreno Lacalle had been appointed to pass upon and decide such disputes as might arise between the parties, but Mr. Arellano refused to interfere for the reason that his acceptance of the trust had never been obtained, and Mr. Arellano authorized Rafael Enriquez to so quote him, which he did when he was required by the notary public, Mr. Barreror, acting in behalf of Mr. Moreno Lacalle, to attend the meeting provided for in the second basis of the agreement.

10. Mr. Rafael Enriquez, having reached the conclusion that the refusal of his brother, the executor, to explain the aforesaid irregularities was due to certain fraudulent acts committed by him during his administration of the estate, was compelled, much to his regret, to file a criminal complaint against him on the eighteenth of December, 1897, with the competent authorities, charging him with the crimes which gave rise to that famous case, number eighty-two, which has been before all of the courts of this City; and this was one of the reasons why Rafael Enriquez could not legally attend the meetings to which he was thereafter summoned by notary.

11. Mr. Moreno Lacalle, in view of the fact that the inventory in question and the preliminary partition made by himself and Francisco Enriquez, without the intervention of Mr. Arellano, who should have intervened, and without the knowledge of my client, Antonio Enriquez, had been turned over to the authorities, as evidence of the various crimes imputed to the executor, solemnly resigned his trust (document number four) alleging that the acts of opposition on the part of Rafael Enriquez made it impossible for him to proceed with the partition proceedings, as though my client could have compromised the various crimes which he, with disgust, had discovered, and for which he would have made himself liable had he failed to report them to the authorities, all of such crimes being of a public nature and for this reason not being subject to any possible agreement.

12. Mr. Moreno Lacalle, forgetting the injury caused to my clients by his conduct and the noncompliance with the provisions of the second basis of the agreement in question, and being ignorant per-

haps of the gravity of the crimes charged by my client against the executor, Francisco Enriquez, brought, on the 29th of December, 1898, against Francisco Enriquez, who was then confined in arrest at his own house as a result of the charges above referred to, and not against Rafael Enriquez, who was one of those who had conferred upon him the trust in question, an executive action to recover his alleged fees, amounting to six thousand, two hundred and ninety pesos for professional services rendered the parties interested in the estates, the subjects of the partition; ignoring also the letter hereinbefore referred to in which he fixed his fee upon the basis of two and one-half per cent of the total value of the property of the estate for the services rendered by him from the time he commenced to render such services, in the year 1891, and until the partition was finally completed and approved.

13. Upon the death of Mr. Lacalle, his surviving wife and testamentary executrix was substituted in his stead in the action in question, as a result of which the house on Calle Dasmariñas, known as the "Old Theatre" of Binondo, valued at thirty-three thousand pesos, and belonging to the estates in question, the participants therein being Rafael Enriquez and his brothers and sisters, was attached and levied upon.

14. On the fifth of January, 1899, Francisco Enriquez admitted that the estate of which he was the administrator was indebted to Mr. Lacalle in the aforesaid sum for professional services rendered by him in the course of several years.

Execution having been issued against the said estates, and due demand having been made upon the defendants, the latter pointed out house number — on Calle Dasmariñas, Binondo, valued at thirty-three thousand pesos, which was levied upon. This property belonged to the estate to which my clients are entitled.

15. For reasons which I will not state in detail, and which will probably not escape the notice of the court, Francisco Enriquez failed and neglected to resist the claim of Mr. Lacalle, and for this judgment by default was entered against him, the case having proceeded to its final determination at the prosecution of Florencia Victoria y Mendoza, the surviving wife and testamentary executrix of Mr. Moreno Lacalle.

This is the status of the case at this time.

16. Section — of the Code of Civil Procedure authorizes the parties to an executive action to bring the corresponding declarative action, and the undersigned, availing himself of the provisions of this section, does hereby base his foregoing complaint upon the following

Legal Grounds.

1. By the public instrument executed on the twenty-second of April, 1891, a contract of agency was entered into between Rafael Enriquez and Francisco Enriquez, and Messrs. Moreno Lacalle and Icaza, appointed to make a partition of the estates of the deceased Antonio Enriquez and his wife, Ciriaca Villanueva. Sections 1709 and 1710 of the Civil Code.

2. On account of the death of Mr. Icaza, which occurred in the year 1896, he having been appointed as aforesaid by Francisco Enriquez prior to the preparation of the inventory, and the former agreement having been amended and modified by the instrument of the twenty-sixth of August, 1896, the agency ceased to exist as to the said Mr. Icaza, and continued only as to Mr. Moreno Lacalle, whose appointment was confirmed by the contracting parties, Francisco, Rafael and Antonio, surnamed Enriquez. Sections 1732 and those above-cited.

3. Mr. Cayetano Arellano, having been designated and appointed by Mr. Lacalle, and such appointment having been accepted by the contracting parties, so that both should pass upon and decide all questions which might arise from any objection made by Rafael

9 subject to this condition, which constituted one of the instructions given by the principals and upon which the efficacy of the contract depended; so that should the agent fail to comply therewith, the agency could be, and as a matter of fact is revoked, for the reason that in the case of conditional obligation the acquisition as well as the loss of the rights acquired depend upon the event constituting the condition. The contract in question being a contract of agency, the principal or grantor may revoke the same at will, and implying as it does a reciprocal obligation, he can either revoke the same or insist upon the fulfillment of the obligation, and in either case sue for such damages as he may have sustained, and the injured party in the present case was Rafael Enriquez and the brothers and sisters whom he represents. Basis two, letter (d) of the instrument last mentioned, and sections 1098, 1114, 1124 and 1733 *ibidem*.

4. Considering the language of the aforesaid basis two and the terms of the letter written by Moreno Lacalle by which the rights and obligations of the parties hereto should be governed, there is no legal explanation and much less a ground upon which to demand and recover the fees in question from Francisco Enriquez instead of from my client, who was a party to the instrument in question, since the said Francisco Enriquez was at the time under arrest by order of the American Military Authorities for the crimes hereinbefore referred to, under the surveillance of the said military authorities, and was therefore legally and physically incapable of discharging the duties of his office as such executor. Sections 910, 1114, 1254 and 1255 *ibidem*, and documents numbers —.

10 5. It appears from the context of the document in question that the disputes arising between the interested parties with reference to the accounts to be rendered by Francisco Enriquez prior to the partition, should be submitted for decision to Messrs. Moreno Lacalle and Arellano; and that the said Moreno Lacalle was to receive for his services in connection with the said partition a fee upon the basis of two and one-half per cent of the total value of the estate. Consequently, the manner in which the work should be done and the services rendered, as well as the payment of the fee, depended upon two conditions, to-wit: the intervention or concurrence of Mr. Arellano and the completion and final approval of the parti-

tion which was to be made by Mr. Moreno Lacalle, beginning with the year 1891; for the nature of conditional obligations consists in doing or abstaining from doing something which depends upon a future or uncertain event.

The first of these conditions was discretionary, because Mr. Arellano was at liberty to concur or not, and the second was a condition subsequent, which did not give Mr. Lacalle any right of action to demand his fees until the occurrence of the event upon which the obligation depended. There was a convention or agreement which created no actual right but, as has been said, a right inexpectancy, in other words a just right and expectancy, which has a solid foundation and can not be defeated. Paragraph 5, title 15, book 3 of the Institutes of Justinian. The classical form of this is: The day does not come until the condition is performed.

11 An obligation is not enforceable when it depends for its performance upon a future and uncertain event. Therefore, that obligation which depends upon a future and uncertain event can not be enforced until the event occurs, in other words, *eadem est ratio contrariorum*.

If the services rendered by Mr. Moreno Lacalle were to be paid for as suggested in the letter which he wrote to my client, after the approval of the partition, and the ascertainment of the total value of the property of the estates, including all the services by him rendered since the year, 1891, he has no right whatever to recover for his services for the reason that the inventory was made without first hearing the opinion of my client, this in violation of the aforesaid instrument, the value of the property of the estate, further, more not having been ascertained.

Neither Rafael nor Antonio Enriquez, nor any of those whom the former represents, is responsible, as Mr. Moreno Lacalle seems to insinuate for the noncompletion of the partition of the estate, which was due to the fraudulent acts of Francisco Enriquez committed by him in the course of the administration of the estates of his deceased parents, which fraudulent acts were duly reported to the competent authorities, and to the designation and appointment of Mr. Arellano by Mr. Moreno Lacalle himself, who induced my client to believe that Mr. Arellano would accept such appointment, which he never did, but on the contrary refused to give his opinion upon the subject, contrary to the terms of the instrument in question.

12 The failure on the part of Rafael Enriquez and Antonio Enriquez to attend the meetings to which they were summoned, can not be construed as unjustified acts of opposition on their parts, but as an eloquent protest against the violation of the second basis letter (d) of the instrument in question and the crimes committed by the said executor, Francisco Enriquez, in the discharge of his duties.

The facts hereinbefore stated show conclusively that the suspension of the partition proceedings above referred to was due to Mr. Moreno Lacalle, who failed to pass upon and decide the objections made by the parties in the manner stipulated, and whatever action he took was taken by him without the knowledge of my clients, and

also to the legal impediment raised by the complaint made by my client of the fraudulent acts and omissions of the said executor. The fault or negligence of the debtor consists (section 1104 of the Civil Code) in the omission of that diligence which the nature of the obligation requires, with due regard to the circumstances of the person, of the time and of the place.

"Where the obligation does not state how much diligence should be observed in the fulfillment of the obligation, such diligence as may be expected from a good father of a family shall be required."

Section 1101 of the Civil Code provides that those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever should act in contravention of the stipulations of the same, shall be liable for the losses and damages caused thereby. This liability is demandable in the fulfillment of all kinds of obligations. Section 1103.

The indemnity for losses and damages includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize, except as provided in the following articles. Section 1106, *ibid*.

The legal impediment arising from the complaint against Francisco Enriquez constituted a real fortuitous event foreseen and inevitable, *casus à nullo prestatur*, Rule 23, *Regulis Juris*, and section 1105, *ibid*. The effect of this fortuitous event according to this general rule was to relieve my client from the obligation of paying Mr. Moreno Lacalle for his services as above stated from the year 1891 to the 18th of December, 1897, when the criminal action in question was brought against Francisco Enriquez for the crimes committed by him in the performance of his duties as executor, which crimes were discovered during the preliminary proceedings which preceded the partition.

6. The nullity of the executive action may be obtained when the title upon which the complaint was based had no executive force, the amount not being demandable. It has been shown that Mr. Moreno Lacalle in his letter of the 19th of August, 1896, to my client stated that the amount of his fees for the services rendered by him since the year 1891, when the partition proceedings were commenced, depended upon the total value of the estate and of the final approval of the said partition, consequently he can not recover for his services as itemized in the account submitted to this court for the approval of Francisco Enriquez, and the latter's admission as to the correctness of the bill is null and void. Section 1449.

14 7. My clients are the joint owners of the property thus attached and subsequently sold at public auction, the said property belonging to the estates of the deceased Antonio Enriquez and Ciriaca Villanueva, of whom they are the only heirs, testate and abintestate. Sections 392 and 609, paragraph 2, *ibid*.

8. He who is deprived of his property, even by competent authority, but without sufficient cause of public utility, after proper indemnity, is entitled to be protected and reinstated in the possession of the property by the courts. Section 349 *ibid*.

9. The undersigned counsel in pursuance of instructions received from his principals, who are the joint owners of the house and lot on calle Dasmariñas, known as the "Old Theater," in the district of Binondo of this City, brings this declarative action under section 1461 of the Code of Civil Procedure, such being the proper remedy under the law.

10. Considering that the present action is the consequence of an executive action, no attempt has been made to institute the act of conciliation which should precede the same, this being one of the exceptions provided in section 443, paragraph 2 of the Code of Civil Procedure.

11. This action is brought as indicated by the title of this complaint against Florencia Victoria Mendoza as the widow and testamentary executrix of Mr. Moreno Lacalle, deceased, since the right of obligations of a deceased person are transmitted upon his death to his heirs, (section 661 of the Civil Code) and upon this ground I, in behalf of my clients do hereby pray for the reasons hereinbefore stated that the executive action in question be declared

15 null and void.

12. In order not to break the continuity of the action in the court where it was originally brought, I further pray that all proceedings thereunder heretofore had be declared null and void. Judgment of the Supreme Court of Spain of the third of May, 1882.

For the reasons hereinbefore stated, I pray the court that, after consideration of this petition, together with the documents attached thereto, as filed by me in behalf of the parties whom I represent, after trial the executive action herein referred to be declared null and void, with the costs of the said action, and those of the present action against the judgment creditor in the executive action, and damages.

Further, I promise to exhibit if required the original letter written by Mr. Moreno Lacalle, to which paragraph four of this complaint refers, as well as a certified copy of the power of attorney and of the will of Don Antonio Enriquez, now on file in this court and in the office of the clerk, Mr. Mendoza, which certified copies have been requested but not yet furnished.

Wherefore, I pray that the Court take this offer into consideration, and your petitioner will ever pray.

Manila, September 21st, 1900.

(Signed)

FELIPE G. CALDERON.

Be it also remembered, That the defendant, Florencia Victoria, appeared in said court in due time, through her attorney Enrique Llopez Becerra, and demurred to the complaint on the ground that the plaintiffs had no legal capacity to sue in the executive action which was the subject of the said complaint, and that the estate of

16 Antonio Enriquez y Sequera, through its legal representative was the only one entitled to bring this action.

Be it also remembered, That the present cause having been transferred to the then court of First Instance of the District of Intramuros, City of Manila, the judge of said court made an order

on the ninth of May, 1901, overruling defendant's demurrer to the complaint.

Be it also remembered, That counsel for defendant, Florencia Victoria, having appealed to the Supreme Court of the Philippine Islands from the aforesaid order of the ninth of May, 1901, overruling the demurrer as aforesaid, the said Supreme Court rendered a decision on the 17th of October, 1901, affirming the order of the ninth of May, 1901, appealed from.

Be it also remembered, That on the 28 day of April, 1902, the plaintiffs, with the permission of the Court first had, filed their first amended complaint, joining the defendant Francisco Saez Co-Tiongco as a party defendant, in the Court of First Instance of the City of Manila, which said amended complaint is in the words and figures following, towit:

Title.

Come now the plaintiffs in the cause heretofore brought in the former court of First Instance of Intramuros on the 21st day of September, 1900, and at present pending before this Court, and entitled as follows: "Rafael Enriquez et al., represented by their attorney, Charles A. Davis, plaintiffs, versus Enrique Llopez, representing Florencia Victoria" and with the permission of this Court first obtained, file this, their amended complaint in said cause, and as a cause of action complain and allege:

17 1. That on or about the — day of —, 1884, and in the City of Madrid, Kingdom of Spain, Antonio Enriquez y Sequera, died testate, leaving as his only heirs his legitimate children, the plaintiffs in this action, and Francisco Enriquez and Carmen Enriquez, excepting the plaintiff Antonio Gascon, who is the only surviving child of Doña Concepción, one of the daughters who survived the said Antonio Enriquez y Sequera, which daughter is now deceased.

2. That by his last will and testament the said Antonio Enriquez y Sequera left his estate to his children, share-and-share-alike.

3. That at the time of his death the said Antonio Enriquez y Sequera was exclusive owner and was in possession of several distinct parts and parcels of property, real and personal, in the City of Manila, Philippine Islands, and more particularly of the real estate hereafter described.

4. That upon the death of the said Antonio Enriquez y Sequera, Francisco Enriquez, his oldest surviving son, entered as executor of the last will and testament upon the administration of the estate of the said Antonio Enriquez y Sequera deceased, and the said Francisco Enriquez entered upon the discharge of his duties as such executor on or before the first day of January, 1885, continuing as such executor for two or more years thereafter, to-wit, until on or about the first day of January, 1887, but the said Francisco Enriquez, claimed and pretended to act as such until on or about the beginning of the year 1900.

18 5. That on or about the first day of January, 1895, the plaintiff, Rafael Enriquez, one of the children who sur-

vived the said Antonio Enriquez y Sequera, deceased, was duly authorized and empowered by all the plaintiffs in this action to administer the property of the estate of Antonio Enriquez y Sequera, deceased, the said plaintiffs being the only surviving heirs of the said Antonio Enriquez y Sequera, deceased, with the exception of the said Francisco Enriquez and Carmen Enriquez, the latter being then as now absent in the Kingdom of Spain.

6. That on or about the first day of January, 1895, the said plaintiff, Rafael Enriquez, at the express request and on behalf of the plaintiffs to this action, all of whom were and are the only surviving heirs of the said Antonio Enriquez y Sequera, deceased, with the exception of Francisco Enriquez and Carmen Enriquez, was duly authorized and empowered to administer the property of the above-mentioned estate and to comply with the last will and testament of the said Antonio Enriquez y Sequera, deceased, and is at present so authorized and empowered by the persons hereinbefore mentioned.

7. That on or before the — day of December, 1898, and in the City of Manila, the defendant, Florencia Victoria, in her capacity as testamentary executrix of Jose Moreno Lacalle, deceased, through her duly appointed attorney, Pablo Antonio Martinez, became a plaintiff in an executive action in the Court of First Instance of the District of Tondo against the said Francisco Enriquez for the recovery of the sum of 6,200 pesos, Philippine currency, from the said Francisco Enriquez for professional services as a lawyer, alleged to have been rendered to the said Francisco Enriquez in his alleged capacity as executor, by the said Jose Moreno Lacalle in his lifetime.

8. That thereafter, and at different times, the plaintiffs through their duly authorized attorneys and representatives presented to the said Court of First Instance of the District of Tondo several and various petitions in accordance with the law as to form and substance, and made repeated attempts to secure permission to intervene in the aforesaid action, but their petitions were refused and disallowed.

9. That subsequent to the commencement of the said executive action, the said Francisco Enriquez was cited in due form and in accordance with the law to appear in the said action; that after having been so cited the said Francisco Enriquez failed and refused to appear and defend the said action and voluntarily and negligently permitted judgment to be entered against him as such executor and against the estate of the said Antonio Enriquez y Sequera, deceased, for the aforesaid amount, and costs, by his own will refusal and admission, and according to the information and belief of these plaintiffs, by agreement and with fraudulent understanding between the said Francisco Enriquez and his attorneys and the defendant, Florencia Victoria and her attorneys.

10. That during all of the time mentioned in the foregoing paragraph, the proceedings relating to the rendition of accounts, inventory, appraisal, liquidation and distribution of the estate of the said Antonio Enriquez y Sequera, deceased, were pending in the now extinguished Court of First Instance of Binondo.

20 11. That the alleged bill or claim of the said Jose Moreno Lacalle, or of his executrix, Florencia Victoria, was never filed in the said Court of First Instance of the District of Binondo, or in any other Court having jurisdiction over the estate of Antonio Enriquez y Sequera, deceased. That the services as attorney alleged to have been rendered by the said Jose Moreno Lacalle to the said Francisco Enriquez as such alleged executor and for the benefit of the estate of the said Antonio Enriquez y Sequera, deceased, were never rendered by virtue of any order of any Court having jurisdiction of the affairs of the said estate.

12. That thereafter, and on or before the tenth of September, 1900, and in the said City of Manila, a certain piece of real estate in the said City of Manila, the property of the estate of Antonio Enriquez y Sequera, deceased, was attached by virtue of a writ of execution upon the judgment aforesaid in favor of the defendant, Florencia Victoria, the said property being more particularly described as follows: "That certain piece of real estate and building known as the Old Theatre, having a superficial area of 1567.71 square meters, fronting on Calle Dasmariña, being bounded on the right by Calle Ugalde, and on the left by Calle Marquina, extending to Calle Poblete."

13. That the actual market value of the said property was then and now is 50,000 dollars, United States currency.

14. That thereafter, to wit, on or about the tenth of September, 1900, in the aforesaid action of Florencia Victoria against
21 Francisco Enriquez, all of the said property was sold under the said execution to the defendant Francisco Saez Co-Tiongco to satisfy the said judgment in the said case.

15. That immediately upon this sale under the aforesaid execution possession of the said property was given to the defendant Francisco Saez Co-Tiongco, who for a long time thereafter continued in possession of the same, receiving the fruits thereof.

16. That the said defendant, Francisco Saez Co-Tiongco has received and collected since on or about the first day of October, 1900, and for a long time thereafter, in the City of Manila, the sum of 600 pesos, Philippine Currency, as monthly rental for the use and occupation of the entire property.

17. That the alleged cause of action mentioned in the case of the said Florencia Victoria against Francisco Enriquez was not, and never was, an obligation which the said Antonio Enriquez y Sequera, deceased, had incurred during his life, and was not an obligation incurred by the estate of the said Antonio Enriquez y Sequera, deceased, after his death.

18. That the said defendant, Francisco Saez Co-Tiongco, has collected and appropriated to his own use since the month of October, 1900, an amounts which greatly exceeds 7,000 pesos, Philippine Currency, and that he is collecting and receiving and appropriating to his own use the sum of 600 pesos per month, Philippine
22 currency, as rent for the use and occupation of the said property.

19. That the said defendant, Francisco Saez Co-Tiongco

has no other known property in the Philippine Islands of sufficient value and subject to execution to answer for any amount for which he may be liable to the said estate of Antonio Enriquez y Sequera, deceased, for the rent and profits of the said property which he appropriated to his own use and benefit, and is therefore insolvent, and no execution against him could be satisfied.

Wherefore, plaintiffs pray:

(a) That this Court appoint a receiver to take possession of the said property, collecting the rents and proceeds therefrom, and depositing the same in this Court.

(b) That a liquidation and settlement be made between the parties to this action of the rents and profits collected and received for the use and occupation of the said property by the defendants, or by each of them, and that judgment be entered against the defendants and each of them for the sum for which they may be found liable in accordance with the said liquidation.

(c) That it be adjudged and decreed that the alleged sale of the said property as above stated, to the defendant Francisco Saez Co-Tiongco is null and void, and of no legal effect whatever.

(d) That it be adjudged and decreed that the said property belongs to, and is a part of the estate of Antonio Enriquez y Sequera, deceased, free of any lien or encumbrance in favor of the defendants or any of them.

(e) For such other and further relief as the Court may deem just and equitable.

(f) For the costs of this action.

23 (Signed)

MONTAGNE & DOMINGUEZ,

Attorneys for Plaintiffs.

Be it also remembered, that on the 14th of May, 1902, the defendant, Francisco Saez Co-Tiongco, through his attorney Simplicio del Rosario, filed his answer to the said amended complaint, which said answer is in the words and figures following, to-wit:

Title.

Comes now the defendant and denies all the allegations contained in the amended complaint which are in conflict with the allegations of his answer, which he hereby reproduces, filed in the case brought by the same plaintiffs upon the subject above-mentioned.

Manila, May 14th, 1902.

(Signed)

S. DEL ROSARIO.

Be it also remembered, that on the second day of June, 1902, the defendant, Florencia Victoria, filed her answer to the said first amended complaint, which said answer is as follows:

Title.

Comes now the defendant, Florencia Victoria, in the above entitled action, and answering the complaint, states:

1. That she neither admits or denies the allegation contained in

the first three paragraphs of the complaint, for the reason that none of them concern her.

2. That she admits the first part of paragraph four of the
24 complaint, but denies all the other allegations of the said paragraph, beginning with the words: "and the said Francisco Enriquez entered upon the discharge of his duties as such executor on or about the first day of etc. etc.

3. That she specifically denies the allegations contained in paragraphs five and six of the complaint.

4. That she admits the allegations contained in paragraph seven of the complaint stating however that the action was not brought against Francisco Enriquez personally but as executor of the estate of Antonio Enriquez, deceased, which said estate was the party really and actually indebted to the said Jose Moreno Lacalle for the said amount for services rendered by the latter as counsel for the said estate at the request of all the heirs.

5. That she neither admits nor denies the allegations contained in paragraph 8 of the complaint, but if such allegations were true it is impossible to explain why the plaintiffs in this case did not prosecute the remedies which the law afforded against any order disallowing or refusing their request to intervene in the action which had been instituted to recover the sum in question by the defendant in this case against the estate of Antonio Enriquez, which they probably did not do because they knew that their claim was absolutely unfounded.

6. That she denies the allegation contained in paragraph nine, and as a defense thereto she alleges that Francisco Enriquez, acknowledging that the indebtedness which the defendant herein was attempting to collect was just, which was also acknowledged expressly by his co-heirs, and to avoid further expense to the estate, did not oppose the executive action referred to, and it should be

noticed that Mr. Jose Moreno Lacalle was engaged as an attorney in connection with the estate of Antonio Enriquez,
25 first by Rafael Enriquez, as appears from the instrument of the 22nd of April, 1901, and afterwards by Rafael Enriquez himself and all of his brothers, as shown by the instrument of the 25th of August, 1896.

7. That she denies the allegations contained in paragraph 10 of the complaint.

8. That she denies the allegations contained in paragraph 17 of the complaint, and as a defense thereto alleges that the bill was presented in due form and that the Court would not have issued as it did the writ of execution if the provisions of section 1411 of the old Code of Civil Procedure had not been first complied with. Defendant further alleges that Jose Moreno Lacalle did not render his professional services to Francisco Enriquez, but to the estate of Antonio Enriquez, for which no order of the court was necessary, since under the will of Antonio Enriquez and by agreement of the plaintiffs in this case all affairs relating to the estate of Don Antonio Enriquez were to be transacted extra-judicially and through the attorney Jose Moreno Lacalle.

9. That she admits the allegations contained in paragraph 12 of the complaint.

10. That she denies the allegations contained in paragraph 13 and as a defense thereto alleges, that the property described in the complaint, neither at the time it was sold at public auction

26 nor at any time was worth, and is not now worth the amount alleged in the complaint.

11. That she admits the allegations contained in paragraphs 14 and 15 of the complaint.

12. That as to the allegations contained in paragraph 16, she has nothing to say, for they do not concern her.

13. That she denies the allegations contained in paragraph 17, and as a defense thereto states that the services rendered by Jose Moreno Lacalle to the estate in question were rendered by him to the estate and for the exclusive benefit of the same.

14. That as to the allegations contained in paragraphs 18 and 19, she has nothing to say for they do not refer to the defendant.

15. Defendant further alleges that the facts alleged in the complaint do not constitute a cause of action.

Wherefore, defendant prays that she be acquitted of the complaint, with the costs against the plaintiffs.

(Signed)

ALFREDO CHICOTE,

Attorney for Defendant Florencia Victoria,

Widow of Jose Moreno Lacalle.

Be it also remembered that on the 10th of February, 1904, with the permission of the Court first obtained, the plaintiffs filed a second amended complaint, which said second amended complaint is in the words and figures following, to wit:

(Title.)

Come now the plaintiffs in the cause heretofore brought in the old Court of First Instance of the Sistrict of Intramuros on the 21st day of September, 1900, and now pending before this Court, and

entitled as follows: "Plaintiff, Rafael Enriquez et al., represented by their counsel Charles A. Davis,—defendant Enrique

27 Llopez, in behalf of Florencia Victoria," and with the permission of the court first obtained filed this their amended and supplemental complaint in the above entitled cause and for a cause of action allege:

1. That long prior to 1882 Antonio Enriquez y Sequera and Ciriaca Villanueva de Enriquez were and continued to be until the death of the said Ciriaca Villanueva de Enriquez, husband and wife; that the said Ciriaca Villanueva de Enriquez died intestate in the City of Manila in the year 1882; that the said Antonio Enriquez y Sequera died testate in the City of Madrid in the year 1884, leaving all his property to his surviving children, share-and-share-alike; that the only surviving children and heirs of the said Antonio Enriquez y Sequera deceased, and of the said Ciriaca Villanueva de Enriquez, deceased, are the plaintiffs in this action and the defend-

ant Francisco Enriquez and Carmen Enriquez, the latter being absent in the Kingdom of Spain, with the exception of Jorge Enriquez, now deceased, and with the exception of the plaintiff Antonio Gascon, who is the only surviving child of Concepción Enriquez, one of the daughters who survived Antonio Enriquez y Sequera and Ciriaca Villanueva de Enriquez, but now deceased.

2. That during the existence of the conjugal partnership between the said Antonio Enriquez y Sequera and the said Ciriaca Villanueva de Enriquez, the said conjugal partnership acquired the property hereinafter described, which said real estate became the exclusive property of the said conjugal partnership.

28 3. That upon the death of the said Ciriaca Villanueva de Enriquez, her legitimate surviving children and heirs became the legitimate owners of one undivided half and the said Antonio Enriquez y Sequera became the legitimate — of the other undivided half of the real estate hereinafter described, and the said surviving legitimate children and heirs, and the said Antonio Enriquez y Sequera continued to be the legitimate owners as aforesaid of the property in question, in the proportions above set forth, until the death of the said Antonio Enriquez y Sequera on the date hereinbefore alleged; that immediately after the death of the said Antonio Enriquez y Sequera, the surviving legitimate children and heirs of the spouses became, continued to be, and at present are the owners and legitimate proprietors of the property hereinafter described, and all parts thereof.

4. That immediately after the death of Antonio Enriquez y Sequera, Francisco Enriquez, his eldest surviving son, entered as executor of the last will and testament upon the administration of the estate of the said Antonio Enriquez y Sequera, deceased, and the said Francisco Enriquez entered upon the performance of his duties as such executor on or before the first day of January, 1885, and continued as such executor for two years thereafter, to wit, until the first day of January, 1887, but the said Francisco Enriquez claimed and pretended to act as such until on or about the beginning of the year 1900.

5. That on or about the first day of January, 1895, the plaintiff, Rafael Enriquez, one of the surviving children of the said Antonio Enriquez y Sequera, deceased, was duly authorized and empowered by all of the plaintiffs to this action to administer all the property of the estate of Antonio Enriquez y Sequera, deceased, all
29 of whom are the only surviving heirs of the said Antonio Enriquez y Sequera, deceased, with the exception of the said Francisco Enriquez and Carmen Enriquez, the latter being then as now absent in the Kingdom of Spain.

6. That on or about the first day of January, 1895, the said plaintiff, Rafael Enriquez, at the express request and on behalf of the plaintiffs to this action, all of whom were and are the only surviving heirs of the said Antonio Enriquez y Sequera deceased, with the exception of Francisco Enriquez and Carmen Enriquez, was duly authorized and empowered to administer the property of the above-mentioned estate and to comply with the last will and testament of

the said Antonio Enriquez y Sequera deceased, and is at present so authorized and empowered by the persons hereinbefore mentioned.

7. That about the commencement of this action, the plaintiff Rafael Enriquez, became the duly appointed, qualified and acting administrator of the estate of Antonio Enriquez y Sequera, deceased, under and by virtue of a regular appointment issued by the Court of First Instance of the City of Manila, the said Court having absolute jurisdiction to make the said appointment.

8. That on or about the — day of December, 1898, and in the City of Manila, the defendant, Florencia Victoria, as testamentary executrix of Jose Moreno Lacalle, deceased, through her duly authorized attorney, Pablo Antonio Martinez, became a plaintiff in an executive action in the Court of First Instance of the District of

30 Tondo, against the said Francisco Enriquez for the recovery of the sum of 6,200 pesos, Philippine currency, from the said Francisco Enriquez for professional services as a lawyer, alleged to have been rendered to the said Francisco Enriquez in his alleged capacity as executor, by the said Jose Moreno Lacalle in his lifetime.

9. That thereafter and at different times during the pendency of the said action of Victoria against Enriquez, the plaintiffs, through their duly authorized attorneys and representatives presented to the Court of First Instance wherein the action brought by Florencia Victoria against Francisco Enriquez was then pending, many and various petitions in accordance with law as to form and substance, and made repeated attempts to secure permission to intervene in the aforesaid action, and to defend themselves against the claims of Florencia Victoria, the defendant in this case, but their petitions were refused and disallowed.

10. That subsequent to the commencement of the said executive action, the said Francisco Enriquez was cited in due form and in accordance with the law to appear in the said action; that after having been so cited the said Francisco Enriquez failed and refused to appear and defend the said action and voluntarily and negligently permitted judgment to be entered against him as such executor and against the estate of the said Antonio Enriquez y Sequera, deceased, for the aforesaid amount, and costs, by his own will, refusal and admission, and, according to the information and belief of these plaintiffs, by agreement and with fraudulent understanding between the said Francisco Enriquez and his attorneys, and the defendant

Florencia Victoria and her attorneys.

31 11. That during all the time mentioned in the foregoing paragraph, the proceedings relating to the rendition of account, inventory, valuation, liquidation and distribution of the estate of the said Antonio Enriquez y Sequera, deceased, was pending before the now extinguished Court of First Instance of Binondo.

12. That neither the alleged account of the said Jose Moreno Lacalle nor that of his executrix, Florencia Victoria, were ever filed in the Court of First Instance of the District of Binondo, or in any other court which had taken cognizance of the estate of Antonio Enriquez y Sequera, deceased, or with jurisdiction over the same.

That the professional services alleged to have been rendered by the said Attorney, Jose Moreno Lacalle, to the said Francisco Enriquez in his capacity as executor and for the estate of the said Antonio Enriquez y Sequera, deceased, were never rendered by virtue of an order of any court having jurisdiction over the affairs of the said estate.

13. That thereafter, and on or about the tenth of September, 1900, in the City of Manila, a certain piece of real estate in the said City of Manila, being the property of the surviving children and legitimate heirs of Ciriaca Villanueva Enriquez, deceased, and of the estate of Antonio Enriquez y Sequera, deceased, was attached by virtue of an execution issued to satisfy the aforesaid judgment so rendered in favor of the defendant Florencia Victoria as alleged, said property being more particularly described as follows: "That certain piece of real estate and building known as the "Old Theater" having a superficial area of one thousand, five hundred and sixty-seven square meters and seventy-one centimeters, fronting on Calle Dasmariñas, being bounded on the right by Calle Ugalde and on the left by Calle Marquina, and extending to Calle Poblote."

14. That the actual market value of the said property was then, as now, fifty thousand dollars, United States currency.

15. That thereafter, and on or about the tenth of September, 1900, in the aforesaid action of Florencia Victoria against Francisco Enriquez, all of the said property was sold under the said execution to the defendant, Francisco Saez Co-Tiongco, to satisfy the said judgment rendered in the aforesaid action.

16. That immediately after the said alleged sale under the execution referred to, possession was given to the defendant Francisco Saez Co-Tiongco of the whole of the said property, who for a long time thereafter continued in possession of the said property, receiving the benefits accruing therefrom.

17. That the said defendant, Francisco Saez Co-Tiongco, has received and collected since on or about the first of October, 1900, and for a long time thereafter, in the said City of Manila, the sum of six hundred pesos, Philippine currency, per month, as rent for the use and occupation of all of the said property.

18. That the alleged cause of action in the aforesaid case of Florencia Victoria against Francisco Enriquez was not and never was an obligation which the said Antonio Enriquez y Sequera deceased had incurred during his lifetime, or that the said Ciriaca Villanueva Enriquez deceased had incurred during her lifetime, and was not an obligation incurred by the estate of the said Antonio Enriquez y Sequera or by the abintestate of Ciriaca Villanueva de Enriquez, after their decease.

19. That on the 25th of April, 1902, the plaintiffs duly and lawfully, with the permission of the court first obtained, filed their amended complaint against the defendant, Francisco Saez Co-Tiongco and Florencia Victoria, and immediately thereafter the plaintiffs filed, to be recorded in the office of The Register of Property of the District and Province where the property in question is

situate, a notice of lis pendens, containing the names of the parties plaintiff in this action and those of the defendants Florencia Victoria and Francisco Saez Co-Tiongco, and the subject-matter of this action, and the description of the property in question and involved in this suit.

20. Plaintiffs are informed and believe that after the filing of the notice of lis pendens, as aforesaid, the defendant, Francisco Saez Co-Tiongco transferred and pretended to transfer to the defendant Cho Jan Ling all his right, title and interest to the said property, and attempted and pretended to transfer the title to the said property to the defendant Cho Jan Ling.

21. That the alleged purchases of the said property by the defendant, Francisco Saez Co-Tiongco, and the defendant Cho Jan Ling, respectively, were and each of them was with the knowledge of the rights of the plaintiffs to the said property, and of the pendency of this action, and the said defendants, Francisco Saez Co-Tiongco and Cho Jan Ling, are purchasers with knowledge of the rights of the plaintiffs to the said property.

22. That the defendants, Francisco Saez Co-Tiongco and Cho Jan Ling have collected and appropriated to their own use and benefit, and of each of them, since the first of October, 1900, a substantial sum of money which according to plaintiffs' information and belief amounts to 25,000 dollars, United States currency, and the plaintiffs are informed and believe that the defendants and each of them are collecting and appropriating for their own use and benefit, and of each of them, the sum of about six hundred dollars, United States currency per month, all of which collections are for the rent of the property in question.

23. That plaintiffs are informed and believe that the defendants, Francisco Saez Co-Tiongco and Cho Jan Ling, have no other known property in the Philippines sufficient in value, and subject to execution, to satisfy the amount which may be found to be due from them to the plaintiffs herein and to the said estate of Antonio Enriquez y Sequera, deceased, for the rents and profits of the said property, which they may have appropriated for their own use and benefit, and for this reason the said defendants are insolvent and can not satisfy an execution against them for the said amount, and the said amount is in danger of being lost by the plaintiffs and by the aforesaid estate.

Wherefore, Plaintiffs pray:

35 (a) That this Court appoint a receiver to take possession of all of the said property, and collect the rent and profits of the same, subject to the orders of this Court.

(b) That a liquidation be made between the parties to this action of the rents and profits collected and received for the use and occupation of the said property by the defendants or by either of them and that judgment be entered against the defendants for any amount which may be due according to the said liquidation.

(c) That it be adjudged and decreed that the alleged sale of the property in question to the defendant, Francisco Saez Co-Tiongco, and the alleged sale of the said property by the defendant Francisco

Saez Co-Tiongco to the defendant Cho Jan Ling are and each of them is null and void and of no legal effect.

(d) That it be adjudged and decreed that the property in question belongs to and is the property of the plaintiffs and of the estate of the said Antonio Enriquez y Sequera, deceased, free of any lien whatever on the part of the defendants or any of them.

(e) That it be adjudged and decreed that the defendants and each of them have no right title or interest whatsoever in or to the said property.

(f) That the defendants and each of them, their agents and tenants, be ousted and dispossessed from and of the property in question, and all of it, and that the same be delivered to the plaintiffs and to the administrator of the estate of Antonio Enriquez y Sequera, deceased.

36 (g) For such other and further relief as the court may deem just and equitable.

(h) For the costs of this action.

(Signed)

MONTAGNE & DOMINGUEZ,

Attorneys for Plaintiffs.

Be it also remembered that, On the twelfth of February, 1904, Simplicio del Rosario, filed a statement in writing in the said action, announcing that he had ceased to be the attorney for the defendant, Francisco Saez Co-Tiongco, which said statement is in the words and figures following, to-wit:

(Title.)

The undersigned has just received through the sheriff of this Court the enclosed copies, as attorney in the year 1902, when he was practicing law and before he was appointed Judge of the Court of Land Registration, for Francisco Saez Co-Tiongco.

Since the latter part of the said year, if I remember correctly, I ceased to be the attorney for the said Saez Co-Tiongco, for the reason that he sold the property to which this action relates.

Furthermore, the undersigned, on the 1st of February, 1903, retired from all the litigation in which he was then interested as attorney on account of his appointment as aforesaid.

All of which he has the honor to respectfully state to the court with the return of the enclosed copies, so that it may appear in the record, and have the effect of a notice to counsel for the plaintiffs, that the undersigned has nothing to do with the case in question.

Manila, February 12, 1904.

(Signed)

S. DEL ROSARIO.

37 Be it also remembered, That on the second of April, 1904, the defendant, Francisco Saez Co-Tiongco, filed his answer to the second amended complaint, which said answer is in the words and figures following, to-wit:

(Title.)

The undersigned as counsel for defendant, Francisco Saez Co-Tiongco, answering the last amended complaint filed by the plaintiffs, state:

1. That they deny all the allegations of the complaint.

2. That they specifically deny all the allegations contained in paragraphs 4, 5, 6, 7, 9, 14, 17, 18, 21, 22, and 23 of the complaint.

As a special defense the defendant, Francisco Saez Co-Tiongco, alleges:

1. That the said defendant acquired in good faith and at public auction the property which is sought to be recovered, for the sum of thirty-three thousand nine hundred and thirteen pesos.

2. That the said auction sale took place under and by virtue of a final judgment of the Court of First Instance of Binondo rendered in an executive action, wherein Jose Moreno Lacalle was plaintiff, and the defendant, herein, Francisco Enriquez, was defendant as administrator of the estates of Antonio Enriquez and Ciriaca Villanueva, under whom the plaintiffs claim.

3. That the title thus acquired by the defendant Saez-Co-Tiongco, was duly recorded in the registry of property.

4. That plaintiffs did not intervene in due time in the said executive action, and did not avail themselves of the proper legal remedies to prevent the said auction sale taking place.

5. That after the adjudication of the said property to the defendant, Francisco Saez Co-Tiongco, the plaintiffs herein attempted to subrogate themselves in the rights of the said Co-Tiongco by repurchasing the property, thereby acknowledging the validity of the sale.

Wherefore, The undersigned in behalf of the defendant Francisco Saez Co-Tiongco, ask the Court to acquit them of the complaint, with the costs to the plaintiff.

Manila, April 2, 1904.

(Signed) LEDESMA, SUMULONG & QUINTOS,

Attorneys,

By JUAN SUMULONG.

Be it also remembered, That on the eleventh of April, 1904, the defendant, Cho-Jan-Ling, filed his answer to the second amended complaint of the plaintiffs, which said answer is in the words and figures following, to-wit:

(Title.)

Now comes the defendant, Cho Jan Ling, and states to the Court:

1. That he denies each and all of the allegations of the complaint.

2. That his co-defendant, Francisco Saez Co-Tiongco, bought the property in question at a public auction held under a judgment rendered in an executive action, the said Francisco Saez Co-Tiongco

having paid therefor the sum of thirty-three thousand eight hundred and fifty pesos in cash, which sum was applied for the benefit of the estate in question and of the plaintiffs them-

selves, by paying the debts and obligations which they had incurred, which said purchase was recorded in the registry of property, and thereafter this defendant acquired the same from the said Francisco Saez Co-Tiongco for the sum of sixty thousand pesos paid in cash, which purchase was also recorded in the registry of property. Both purchases were made in good faith and there being no defect appearing in the registry of property upon which to annul the right acquired by Francisco Saez Co-Tiongco, when this defendant bought from him the said property, the same can not be recovered from this defendant.

3. In this same court the plaintiffs or some of them brought an action wherein they pretended to exercise the right to repurchase the property in question, and thereby accepted as valid the sale referred to, judgment being rendered against them, the court holding that they were not entitled to repurchase the said property, and confirming that sale in favor of the said Francisco Saez Co-Tiongco, which judgment has not been appealed and the matter has become *res adjudicata*, and for this reason the plaintiffs can not at this time allege any defect in the judicial sale in favor of Francisco Saez Co-Tiongco.

4. Francisco Saez Co-Tiongco, when he bought the property in question at the judicial sale, had no notice of the defects alleged by the plaintiffs in the executive action, and although the plaintiffs may, perhaps, have a right to litigate again upon the questions involved in the executive action, in an ordinary action, with those who were parties to the first action, the judicial sale in question, however, can not under any circumstances be annulled unless
40 some defects in the judgment or in the levy, rendering the same void, be shown.

5. The defendant as aforesaid, bought the property in good faith and has been in the adverse possession of the same, and when he bought it he found thereon a building in a ruinous condition, which was demolished by order of the municipal authorities, this defendant erecting in place thereof another building, expending therefore the sum of one hundred and twenty thousand pesos, thus increasing the value of the property to this extent, and in case judgment be entered against him for the return of the property, he prays that plaintiffs be directed and required to pay to him the amount so expended before he is compelled to vacate the premises.

Wherefore, He prays the Court to dismiss the complaint, and to acquit him of this action, with the costs against the plaintiffs. He also prays for such other and further relief as, upon the facts, may be found to be just and equitable.

Manila, April 11, 1904.

(Signed)

W. A. KINCAID,

Attorney for Defendant Cho Jan Ling.

Be it also remembered That on the 29th of February, 1904, the defendant, Florencia Victoria, by her attorneys, Pillsbury & Sutra, filed a demurrer to the second amended complaint said demurrer based upon the ground that the complaint did not state facts sufficient to constitute a cause of action, the same having been over-

41 ruled by the Court of First Instance of Manila, on the 18th of April, 1904, plaintiffs having been denied permission to further amend their said complaint, with reference to the defendant Florencia Victoria.

Be it also remembered, That the trial of said cause having been set for the — day of —, the following testimony was taken:

42 UNITED STATES OF AMERICA.
Philippine Islands:

In the Court of First Instance for the City of Manila. Part III.

Before Judge Crossfield.

Antingua. "El Tentro Viejo".

RAFAEL ENRIQUEZ, in His Right, and as Administrator of the Estate of Antonio Enriquez y Sequera, Deceased; Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudes Enriquez, Antonio Gascon, a Minor, Plaintiffs,

VS.

FRANCISCO SAEZ CO TIONGCO, FLORENCIA VICTORIA, and CHO JAX LING, and FRANCISCO ENRIQUEZ, Defendants.

Proceedings.

SEPTEMBER 11TH, 1905.

Mr. A. A. Montagne appeared in behalf of the plaintiff; Hon. W. A. Kincaid on the party of the defendant.

Mr. MONTAGNE: I offer in evidence a certified copy, purporting to be the certificate of marriage of Don Antonio Enriquez y Sequera with Dona Ciriaca de Villanueva y Sierra, and ask that it be marked Exhibit A.

The COURT: There being no objection, it may be received.

Mr. MONTAGNE: I now offer in evidence a certified copy, certified to by the clerk of this Court, of the will of the deceased Don Antonio Enriquez, and ask that it be marked Exhibit B.

43 The COURT: There being no objection, it may be received.

Mr. MONTAGNE: I now offer in evidence a certificate of the Registry of Property, showing a true copy of the record of title to the property, showing the date of the original acquisition of the property by the deceased Antonio Enriquez y Sequera, and its subsequent disposition, and ask that it be marked Exhibit C.

The COURT: There being no objection, it may be received.

Mr. MONTAGNE: I now offer in evidence a certificate of the Registry of Property, purporting to be a copy of the *lis pendens*, and ask that it be marked Exhibit D.

The COURT: There being no objection, it may be admitted.

Mr. MONTAGNE: I now offer in evidence a certificate of the Reg-

istry of Property, showing when the same *lis pendens* was filed, and ask that it be marked Exhibit E.

The COURT: There being no objection, it may be received.

Mr. MONTAGNE: I now offer in evidence a certified copy of a power of attorney dated the 16th day of November, 1895, and ask that it be marked Exhibit F. I also offer in evidence another certified copy of a power of attorney dated the 2nd day of December, 1899, and ask that it be marked Exhibit G.

The COURT: There being no objection, the originals of Exhibits F. and G. may be received, and copies of the originals may be substituted, in order that counsel for the plaintiff may retain the originals.

Mr. MONTAGNE: I now offer in evidence a certified copy of
44 the order of this Court, certified to by the clerk of this Court, dated the 11th day of March, 1901, appointing Don Rafael Enriquez as administrator of the estate, and ask that it be marked Exhibit H.

The COURT: There being no objection, it may be received.

Mr. MONTAGNE: I now offer in evidence a certified copy of an order of the Court of First Instance for the city of Manila, certified to by the clerk of this Court, in relation to a partition of the estate, presented by Don Francisco Enriquez for the approval of the Court, and the action of the Court thereupon, dated the 7th day of November, 1899, and ask that it be marked Exhibit I.

Mr. KINCAID: Objected to on the ground that it is *res inter alia* actio and cannot affect us in any way, we have nothing to do with their family quarrels.

The COURT: I will not pass upon this at the present time, it may be received subject to being stricken out, I will reserve my ruling.

Mr. KINCAID: Exception.

Mr. MONTAGNE: I will now offer in evidence a letter of Don Jose Moreno Lacalle to Don Rafael Enriquez, and ask that it be marked Exhibit J.

Mr. KINCAID: Objected to, it has nothing to do with us, if the land has been properly sold to us it does not matter what correspondence passed between these people.

The COURT: It may come in for the present, I will rule on it later on, the original is offered in evidence, and a copy may be substituted.

45 Mr. KINCAID: Exception.

Mr. MONTAGNE: I now offer a certified copy of the whole of the record in which this property was sold, not only the judgment and the pleadings, but the whole of the record, and ask that it be marked Exhibit K.

Mr. KINCAID: If your Honor please this Exhibit contains one hundred and twenty-one pages, and with the consent of counsel and the permission of the Court, I will ask leave to examine this Exhibit later on, and make such objections as I may think proper, and the Court will then rule upon them and give me the right to take exception.

The COURT: That is your privilege.

JOAQUIN JARAMILLO, called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Sr. MONTAGNE:

Q. State your name?

A. Joaquin Jaramillo.

Q. Where do you live?

A. At No. 60 Calle Cuipit, Sampaloc.

Q. What is your occupation?

A. Deputy Registrar of Property.

Q. What was your occupation in the month of May, 1902?

A. If I am not mistaken, I was in the office of the Registry of Property, and at that time the Registrar was Don Simplicio del Rosario.

Q. I will hand you a document, marked for identification
46 Exhibit L., and I will ask you to state if you recognize the handwriting of that document?

A. Yes, sir, that is my handwriting.

Q. Refreshing your recollection from that document, do you remember the circumstances of issuing it by yourself?

A. I believe that the document specified here in this receipt was brought to the office of the Registry of Property.

Q. I notice that it is not signed, but it is stamped with a seal: can you state why it is not signed?

A. I believe that all these documents were already taken down in the day book, I believe that is the reason why this receipt is not signed, and therefore when a party asks for a receipt, instead of signing it, we only stamp it with a seal.

Mr. MONTAGNE: That is all.

Mr. KINCAID: No cross examination.

LEON QUINTINELLA, called on behalf of the plaintiff, being duly sworn, testified as follows:

Directed examination by Mr. MONTAGNE:

Q. State your name?

A. Leon Quintinella.

Q. Where do you live?

A. No. 105 Calle Alcala, Santa Cruz.

Q. What is your occupation?

A. I am encargado for Don Rafael Enriquez, and act as collector for his houses.

Q. I will show you a document, marked for identification
47 Exhibit L., and will ask you to state if you have seen it before?

A. Yes, sir.

Q. When did you first see that document?

A. In the office of the Registrar of Property.

Q. How did you come to see it?

A. Because it was given to me.

Q. Who gave it to you?

A. The clerk of the Registry of Property.

Q. What did he give you that receipt for?

A. Because Mr. Montagne sent me there to take the document, and he advised me that upon turning in that document I should ask for a receipt for it, and this is the receipt that was given me.

Mr. MONTAGNE: That is all.

Mr. KINCAID: No cross-examination.

A. A. MONTAGNE, on behalf of the plaintiff, being duly sworn, testified as follows:

Examination by the COURT:

Q. State your name and address?

A. A. A. Montagne, residence, Manila, P. I.

Q. What is your occupation?

A. Attorney at law.

Q. Do you desire to make a statement in relation to this case?

48 A. Yes, your Honor.

Q. Proceed.

A. In the year 1902, I was attorney for the estate of Antonio Enriquez y Sequera in various suits and actions, and a day or two or shortly thereafter, on the 2nd day of May, 1902, I prepared a notice of his lis pendens in this case now on trial, and the only notice of this particular property ever filed, and this notice of lis pendens was given by me to the last named witness, Leon Quintinella, to take to the Registry of Property to file and subsequently and on the same day he returned with this receipt, marked for identification Exhibit L., and handed it to me on the 2nd of May, 1902, and this is the same notice of lis pendens filed in evidence in this case.

Cross-examination by Mr. KINCAID:

Q. You are the attorney for the estate of Don Antonio Enriquez y Sequera, because you were employed by the then administrator of the estate?

A. Yes, sir.

Mr. MONTAGNE: I now offer in evidence this document marked Exhibit L., and ask that it be received in evidence.

Mr. KINCAID: Objected to, if Counsel wants to prove notice of lis pendens, it may be shown by the record, and the law specially provides that no one is bound by anything except by what is in the record.

49 The COURT: It may be admitted as a receipt, but not as notice of lis pendens, for the purpose of impugning the date.

RAFAEL ENRIQUEZ, called in his own behalf, being duly sworn, testified as follows:

Directed examination by Mr. MONTAGNE:

Q. State your name?

A. Rafael Enriquez.

Q. Where do you live?

A. No. 102 Calle Carriedo, Quiapo.

Q. What is your occupation?

A. The administrator of our property.

Q. Whose property?

A. The property of the estate of my deceased father.

Q. Are you one of the plaintiffs in this case?

A. Yes, sir.

Q. What was the name of your mother prior to her death?

A. Ciriaca de Villanueva y Sierra.

Q. Do you know when she died, more or less?

A. Yes, sir.

Q. When?

A. In the year 1882.

Q. Do you know the month, more or less?

A. August.

Q. Where did she die?

A. Here in the Philippine Islands.

50 Q. Did she, or did she not, leave a will?

A. She died intestate.

Q. When did your father die?

A. In Madrid.

Q. What time?

A. July, 1884.

Q. At the time of the death of your father and mother, how many children survived them?

A. Ten survived my father.

Q. Can you mention their names?

A. Yes, sir.

Q. What are they?

A. Rafael, Antonio, Trinidad, Cayetano, Rosario, Gertrudes, Francisco, Jorge, Concepcion.

Q. And Carmen?

A. Yes, sir, and Carmen.

Q. Were these children surviving when your father and mother died?

A. Yes, sir.

Q. Who is Antonio Gascon, the plaintiff in this case?

A. Husband of my sister Concepcion, and father of the orphan son of my sister.

Q. I mean the plaintiff in this case?

A. Antonio Gascon is the son of my sister.

Q. Which sister?

A. My sister Concepcion.

Q. Is she alive or dead?

A. She is dead.

51 Q. When- did she die?

A. Manila.

Q. Did she die prior to the commencement of this action, or subsequent?

A. Before.

Q. Did she leave a will, or not?

A. She died intestate.

Q. Leaving no other children whatsoever besides Antonio Gascon?

A. He is the only one.

Q. When did you arrive in Manila?

A. In the year 1896, in April.

Q. Have you remained here ever since?

A. Yes, sir.

Q. You are the Rafael Enriquez mentioned in the two powers of attorney already introduced in evidence?

A. Yes, sir.

Q. I notice these powers of attorney are executed by I think four or five of the heirs: did you, or not, have any other authority besides these powers of attorney from the heirs?

A. In this case all instructions were given to me by my brothers and sisters here.

Q. Do you mean to include in this statement your brother Francisco Enriquez, and his wife Carmen?

A. No, I did not mean to include those two, Francisco and his wife.

52 Q. What year was that in, when you received these instructions and authority from these people?

A. In the year 1900, when this matter of the "teatro viejo" was begun.

Q. Did you receive any other instructions prior to that time?

A. With reference to the theater, we always worked together.

Q. I ask you did you have any authority other than that stated in the record, about the time when you were acting by virtue of such authority?

A. In the year 1900.

Q. Are you sure you never acted prior to that time by virtue of that authority?

A. Since my arrival here.

Q. When did you arrive here?

A. In 1896.

Q. Then you had no instructions from your brothers and sisters here prior to 1900, is that what I understand you to say?

A. It is necessary for you to mention if it is about the theatre, or what, because I have told you that since I came here I have worked in conjunction with them, and with their approval.

Q. Did you have any instructions from your brothers and sisters here other than those given in the powers of attorney, regarding the administration of the property left by your father and mother, prior to 1900?

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A. I do not understand, it is necessary for you to explain. Pardon me, I will try to explain: if you are referring to the theatre matter, all my acts were by authority of those over there as well as those here, and had their entire approval, and outside of the powers of attorney I received instructions from all the heirs here, and I have always acted in accordance with their instructions.

Q. What was the date, the probable date or approximate date when you acted in accordance with the instructions of these heirs here as well as under the powers of attorney that have been shown, not having any particular reference to the case of the old theatre, but with reference to the administration and management of the properties of the estate of your father and mother?

A. I have always acted in accordance with the instructions received from them, as well as those stated in the powers of attorney, and I made use of the powers of attorney also.

Q. Then you only acted in accordance with the powers vested in you by your relatives?

A. Yes, sir.

Q. And no other?

A. And with the approval of the heirs who are here.

Q. When did you commence to act in accordance with the instructions of your brothers and sisters here, as well as under the powers of attorney, regarding the management and administration of the properties of the estate of your father and mother?

54 A. Since I arrived in Manila, in the year 1896.

Mr. MONTAGNE: That is all.

Cross-examination by Mr. KINCAID:

Q. You have never done anything, Don Rafael, either judicially or extra judicially, in this case, in representation of your brothers and sisters, that you did not have authority to do, have you?

A. I have always had authority to do whatever I have done in representation of my brothers and sisters since my arrival here.

Q. And that refers as well as to your brothers and sisters here as to your brothers and sisters in foreign parts?

A. Yes, sir.

Mr. KINCAID: That is all.

Mr. MONTAGNE: It is stipulated by and between the parties hereto, that since the arrival of Don Rafael Enquez in Manila, that the heirs of Antonio Enquez and Antonio Gascon, through his guardian, have always authorized the said Don Rafael Enquez to act for them in relation to the management of the affairs of the estate of Don Antonio Enquez y Sequera and Dona Ciriaca de Villanueva y Sierra, with the exception of Francisco Enquez and his wife, who represent the interests of Jorge Enquez and Carmen Enriquez, Rafael Enriquez and all the others having been absolutely agreed to everything, and Don Rafael Enriquez not having
55 done anything that the others did not endorse.

Mr. KINCAID: I will give counsel for the other side notice

to produce the document extending the time, signed by all the parties.

Mr. MONTAGNE: I have no knowledge of such a document.

GUILLERMO F. GARDNER, called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. MONTAGNE:

Q. State your name?

A. Guillermo F. Gardner.

Q. Where do you live?

A. No. 56 Calle Alix, Sampaloc.

Q. How old are you?

A. Thirty-four years of age.

Q. What is your occupation?

A. Architect.

Q. How long have you been an architect?

A. From the year 1892.

Q. As such architect have you had any experience in the erection or construction of buildings in the city of Manila?

A. Yes, sir.

Q. How long have — devoted yourself to that particular line of business?

56 A. From the time I left school, in the year 1892, I was employed by the Spanish Government in the Department of Public Works, and after that was provincial inspector.

Q. In the year 1892 did you know the property situated in the city of Manila, commonly described and known as the "teatro viejo", and then and formerly belonging to Don Antonio Enriquez y Sequera?

A. Yes, sir.

Q. Did you have any occasion to examine that building carefully at that time?

A. I did not make a professional inspection of the building at that time, but I knew the building, and had several times been in the building, examining the tiendas of the Chinese which are situated at that place.

Q. Did you know the former building on that particular piece of ground before this present building was erected?

A. Yes, sir.

Q. Have you formed any opinion as to the value of that former building which existed on the ground prior to the erection of the present building?

A. Yes, sir.

Q. What in your opinion was the actual value of that building in the year 1902?

A. The old building?

Q. Yes.

A. Do you mean the building only?

A. Yes, the building independent of the ground.

57 A. I did not go into the details of that building, but I knew of the rents of the building, and also the area of land that the building stood on, and should estimate the value of it as from thirty-one thousand to thirty-two thousand pesos.

Mr. MONTAGNE: That is all.

Cross-examination by Mr. KINCAID:

Q. What are you talking about: the material of the building after it was torn down?

A. Not only the material, but also the construction of the building.

Q. After the building was torn down, how much was it worth?

A. The value of the building when torn down, as I know what sort of material there was, I can assure you that if would be of the same value, because it was good material.

Q. I mean the value of the building when torn down?

A. I could not answer the question, as to the value of the material when torn down, because that would depend on the way the house was torn down, whether much of the material was wasted or not, and I did not witness the demolition of the building.

Q. What was the material of the building?

A. Mamposteria and wood, with a roofing of tiles on one part, and on the other part corrugated iron.

Q. And it was a very old building, was it not?

A. Yes, sir, it was of good age.

Q. And the mamposteria would not be worth anything?

58 A. Why not, there was some good stone from Meycauayan, and that was worth something.

The COURT: What do you mean by mamposteria?

A. Mamposteria means a stone wall connected with mortar.

Q. And that would not be worth anything after the building was destroyed?

A. The Meycauayan stone would be worth something.

A. And the mamposteria?

A. Only the stone would be worth anything.

Q. Let us suppose that the building was properly torn down, how much would the material have been worth?

A. About fifty per cent, if properly demolished.

Q. Then you think the material alone would have been worth fifteen thousand pesos?

A. Something like that.

Q. You have testified two or three times in regard to the value of that building?

A. Yes, sir, I testified once in regard to the building, and I remember testifying at that time that the value of the property together with the land was fifty thousand pesos, and that the actual value of the present building erected on said lot would be worth ninety thousand pesos.

Q. Then according to your opinion the land is worth about twenty thousand pesos?

A. Formerly, yes.

Q. At the time of your examination?

A. Yes, sir.

59 Mr. KINCAID: That is all.

Redirect examination by Mr. MONTAGNE:

Q. Was there considerable lumber in the old building?

A. Yes, sir.

Q. Have you had experience of the lumber used in old buildings?

A. Yes, sir.

Q. What kind of lumber was used in old buildings?

Mr. KINCAID: Objected to as improper.

The COURT: Objection overruled.

A. In old buildings there was generally used for the uprights and framework of the building, molave, and on the joints, beams and roofing, yacan.

Q. Do you know whether that building had that kind of lumber?

A. Yes, sir, surely.

Q. At the time you saw this building in 1902, was the lumber you noticed in the building in such condition that it could be used for rebuilding?

A. In answering that question let me make an explanation: at the time I was drawing plans for the Teatro Paz, and one day I went there, and was looking at the lumber at that place, and I noticed that the material was in very good condition.

Mr. MONTAGNE: That is all.

60 RAMON PEREZ GOFFOUR, called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. MONTAGNE:

Q. State your name?

A. Ramon Perez Goffour.

Q. Where do you live?

A. In the city of Manila.

Q. How old are you?

A. Forty-two years of age.

Q. What is your occupation?

A. Architect.

Q. How long have you been an architect?

A. I have held that office here since the year 1899.

Q. Have you had any practical experience in the construction of buildings in the city of Manila?

A. Yes, sir.

Q. Have you had experience as to the value of buildings in the city of Manila?

A. Yes, sir.

Q. How long have you been devoted to that line of business here in Manila?

A. I came to Manila, or rather to the Philippine Islands, in the year 1883, and I have devoted myself especially to that line of business since the American occupation.

Q. Did you examine on or about the year 1902, and before the erection of the present building, the old building that was
61 then on the ground, formerly known as the "Teatro Viejo"?

A. Yes, sir.

Q. Have you formed an opinion as to what was the actual value of the former building, then existing on the ground formerly known as the "Teatro Viejo", in the year 1902, answer, yes, or no?

A. Yes, sir.

Q. What in your opinion was the value of that former building in the year 1902, approximately?

A. I believe at that time, taking into consideration the value of property in Manila at that time, that the value of that building would be between thirty two thousand and thirty three thousand pesos.

Mr. MONTAGNE: That is all.

Mr. KINCAID: It is agreed by the parties that for the present the issue about rents and profits may be eliminated, and the Court shall hear the evidence and determine the question of title involved, and the good or bad faith of the defendant in the purchase, and if the Court finds in favor of the defendant, of course there will be no order for an accounting of rents and profits, and if the Court finds in favor of the plaintiff, he will make a corresponding order for an accounting of the rents and profits.

The COURT: It may be so ordered.

62 FRANCISCO SAES GO TIONGCO, called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. MONTAGNE:

Q. State your name?

A. Francisco Saes Go Tiongco.

Q. Where do you live?

A. Plaza Goiti, Santa Cruz.

Q. What is your occupation?

A. Merchant.

Q. You are one of the defendants named in this case, are you not?

A. Yes, sir.

Q. Do you know the property commonly called the "Teatro Viejo" property?

A. Yes, sir.

Q. Do you remember the date when the new building was commenced to be built?

A. I believe over a year ago now.

Q. Can you tell approximately what date?

A. I do not remember.

Q. Did you have the building constructed there, or was it Cho Jan Ling?

A. I do not know who is the one who ordered the building of that house there.

Q. Was it built while Cho Jan Ling was the owner, or while you were the owner?

A. It was built when Cho Jan Ling was the owner.

63 Q. I will show you an order of the Building Department in relation to the demolition of the building, and will ask you to state if this is about the date, the date specified in this order?

A. It was a long time ago, I don't remember.

Mr. MONTAGNE: That is all.

Cross-examination by Mr. KINCAID:

Q. Who is the contractor who built that building?

A. I do not know.

Mr. KINCAID: It is stipulated by and between the parties hereto, that on the 23rd of July, 1902, the Department of Engineering and Public Works of the City of Manila, gave the owner of the property in question in this suit, notice to remove the building in question, which had been condemned by said department; that the defendant in this suit, who claimed to be the owner of the building, immediately set about removing the said old building in accordance with said notice, and that four months thereafter the old building was totally removed and the erection of the new building begun.

Mr. MONTAGNE: With the exception of the rents and profits, which are reserved, that is our case.

The Court then adjourned until 2 o'clock in the afternoon.

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AFTERNOON SESSION.

Defense.

RAFAEL MACHUCA GO TAUCO, called on behalf of the defense, being duly sworn, testified as follows:

Direct examination by Mr. KINCAID:

Q. State your name?

A. Rafael Machuca Go Tauco.

Q. Where do you live?

A. In Manila.

Q. What is your occupation?

A. Contractor.

Q. Who built, if you know, the house which is to-day occupying the ground formerly occupied by the "Teatro viejo"?

A. I did.

Q. Please tell the Court the value of that house to-day.

Mr. MONTAGNE: Objected to on the ground that it is incompetent and immaterial, no foundation having been laid for its introduction.

The COURT: The witness may answer.

Mr. MONTAGNE: Exception.

A. The original contract was one hundred and eight thousand pesos, and there were some amplifications ordered to the extent of some three thousand and odd pesos.

Q. Then it cost all told how much money?

A. One hundred and ten thousand seven hundred and forty one pesos.

65 Q. Is the house worth that today?

Mr. MONTAGNE: Objected to on the ground that it is incompetent and immaterial, and on the further ground that no foundation has been laid to base the question upon.

The COURT: Objection overruled, while it is not the best evidence of value, yet the cost of erection is taken as a measurement.

Mr. KINCAID: I withdraw the question. Are you acquainted with the value of buildings in the city of Manila?

A. Of course.

Q. Now I ask you if this house is worth to-day what it cost to build it?

A. Yes, sir.

Q. Are you also acquainted with the value of land in the city of Manila?

A. Not so well.

Q. Tell the Court, if you know, how much more that piece of property is worth, with the house that is on it, now, than it would be without it?

Mr. MONTAGNE: Objected to on the ground that it is immaterial, and calls for a speculative opinion on the part of the witness.

The COURT: Objection overruled.

Mr. MONTAGNE: Exception.

A. I cannot say, because I do not know the value of the land.

Mr. KINCAID: That is all.

Mr. MONTAGNE: No cross-examination.

66 Mr. KINCAID: I now offer in evidence, and ask that it be marked Exhibit D. 1., from the auto of Rafael Enriquez vs. Francisco Saes Go Tiongco, sobre retracto de una finca subastada: first the complaint in that case, and the accompanying powers of attorney. I offer the whole complaint with the powers which are annexed, to be found on pages one to thirteen inclusive of the auto.

Mr. MONTAGNE: I object to the offer on the ground that it is incompetent, and on the ground that it is not any evidence of any damage on the part of the plaintiffs or any of them. It is not any evidence of any estoppel, and in general is incompetent.

The COURT: Objection overruled, it may be received.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I also offer in evidence the diligencia which appears here in the same auto, on page 15, showing thirty seven thousand nine hundred and fifteen dollars deposited for the purpose of buying back this property, and ask that it be marked Exhibit D. 2.

Mr. MONTAGNE: No objection.

Mr. KINCAID: I also offer in evidence the answer of Francisco

Saes Go Tiongco, commencing on page 36 and ending on page 40 of the same auto, and ask that it be marked Exhibit D. 3.

Mr. MONTAGNE: No objection.

Mr. KINCAID: I also offer in evidence the petition of Don Rafael Enriquez and litis socios, substituting Mr. Charles Davis, the attorney, for Rafael Enriquez and litis socios, on page 49 of the same auto, with a providencia confirming the substitution, and ask that it be marked Exhibit D. 4.

Mr. MONTAGNE: Objected to on the ground that it is incompetent, and on the ground that the pleadings cannot be admissible as any admission of the party, for the pleading is only signed by the attorney and is not competent as an admission of the parties.

The COURT: It may be received for the present, I will reserve my ruling.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer the power of attorney which accompanies it, substituting Charles Davis for Mr. Calderon, and asking for a suspension of the proceedings until a definite decision in this action now pending, and ask that it be marked Exhibit D. 5.

Mr. MONTAGNE: Same objection as to the former offer, as incompetent, and cannot be used as evidence against any of the parties, as evidence of an admission or estoppel against them.

The COURT: It may be received for the present. I will reserve my ruling.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer in evidence the petition of Mr. Charles Davis in the same case, beginning at page 63 and ending at page 65 vuelto, and ask that it be marked Exhibit D. 6.

68 Mr. MONTAGNE: Same objection as to former offer.

The COURT: Ruling reserved, it may — received for the present.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I also offer from the same auto another escritura, beginning at page 69 and ending at page 74, and ask that it be marked Exhibit D. 7.

Mr. MONTAGNE: Same objection.

The COURT: Same ruling.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer another escritura from the same auto, beginning at page 75 and ending at page 76 vuelto, and ask that it be marked Exhibit D. 8.

Mr. MONTAGNE: Same objection.

The COURT: Ruling reserved on all these objections, but my impression is that whatever attorneys may have stated in former cases is not binding on these plaintiffs at this time.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer in evidence the petition of Montagne & Dominguez, to be found at pages 77 and 78 of the same autor, and ask that it be marked Exhibit D. 9.

Mr. MONTAGNE: Same objection.

The COURT: Same ruling.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer the sentence of the Court, to be found on pages 90 to 92 inclusive of the same auto, and the autors
69 further on show no appeal from this judgment, and ask that it be marked Exhibit D. 10.

Mr. MONTAGNE: Objected to as incompetent, immaterial and irrelevant, and on the further ground that it is a judgment of the court rendered without evidence. I have no objection to your offering the judgment if you introduce the whole record.

The COURT: The only part of the record competent would be the pleadings and the judgment. Ruling reserved.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer the whole document from the same auto, beginning at page 98 and ending at page 116 vuelto, and ask that it be marked Exhibit D. 11.

Mr. MONTAGNE: Objected to as immaterial, incompetent for any purpose, and on the same grounds as before.

The COURT: Ruling reserved.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I now offer in evidence the contract with the Chinaman to sell this property for forty thousand dollars by Don Rafael Enriques, when they brought this retracto suit, to be found on pages 93 to 97 inclusive of the same auto, and ask that it be marked Exhibit D. 12.

Mr. MONTAGNE: Same objection.

The COURT: They may all be received. I will look them over and make a finding on the objection to each one made by counsel, and will render a ruling later on.

Mr. MONTAGNE: Exception.

70 W. A. KINCAID, on behalf of the defense, being duly sworn, made the following statement:

Examination by the COURT:

Q. State your name and residence?

A. W. A. Kincaid.

Q. What is your occupation?

A. Attorney at Law.

Q. Do you desire to make a statement in regard to this matter?

A. Yes, sir.

Q. Proceed.

A. I want to state that at the former trial before Judge Ambler, I presented all the title papers I had in this case, and the judge went away and the stenographer went away also, and the clerk has never been able to find the papers. They were the original title papers or as near the originals as I could get, such as first copies from protocols of the notaries. I will now offer a transcript from the Registry of Property in this city of all that appears in that registry in reference to this property, showing that it was entered in the registry as the property of Cho Jan Ling. I ask that this transcript be marked Exhibit D. 13.

The case was then suspended until 8 o'clock, following morning.

71

SEPTEMBER 12TH, 1905.

Pursuant to adjournment the case was called at 8 A. M. with the same appearances.

MR. KINCAID: In introducing the judgment yesterday in the retracto suit, I omitted to introduce the diligencia of the intervention. I now offer in evidence this diligencia, on page 92 and vuelto of the retracto suit, and ask that it be marked Exhibit D. 14.

MR. MONTAGNE: I make the same objection as I did to the other exhibits of this nature.

THE COURT: Ruling reserved.

MR. MONTAGNE: Exception.

MR. KINCAID: It is agreed that the order which appears in plaintiff's Exhibit K, appointing Don Rafael Enriquez administrator, because of the disability of Don Francisco Enriquez, who was at that time in jail, was revoked as soon as Don Francisco Enriquez came out of jail, which was within the next two or three days; but that Don Rafael Enriquez was again appointed at the time mentioned, the 11th day of March, 1901.

MR. MONTAGNE: Counsel on the other side has presented parts of the record of Francisco Enriquez vs. Francisco Saez Go Tiongco, sobre retracto de una finca subastada, and without admitting the competency or the materiality of the parts of the record so introduced by judge Kincaid on behalf of the defendant, I desire now to offer the whole of that record.

72

FRANCISCO SAEZ GO-TIONGCO, recalled on behalf of the defense, testified as follows:

Direct examination by MR. KINCAID:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You are the Francisco Saez Go Tiongco who bought this property at a judicial sale, are you not?

A. Yes, sir.

Q. Did you pay the amount stated in your escritura?

A. Yes, sir.

Q. Who did you pay it to?

A. To the Judge of the Court.

Q. And at the date of the sale?

A. There was three thousand dollars deposited as a guarantee at that time, and when the possession was transferred to me, I paid the balance.

Q. To the Judge?

A. Yes, sir.

Q. Do you remember his name?

A. I do not.

Q. Was it Memije?

A. I believe so, he is cross-eyed.

Q. At the time you bought this property at the judicial sale did you know anything about the fact that Don Rafael Enriquez and his brother were objection to that sale?

73 Mr. MONTAGNE: I object to the question as incompetent and immaterial.

The COURT: Objection overruled.

Mr. MONTAGNE: Exception.

A. We did not know.

Q. You mean that you did not know anything about it?

A. I did not know that they were objection to it; only read in the paper that it was to be sold, in the Gazette.

Mr. KINCAID: That is all.

Cross-examination by Mr. MONTAGNE:

Q. What do you mean by "we did not know": was there more than yourself?

A. I mean myself.

Q. Did you buy for yourself, personally, or for Cho Jan Ling?

A. I bought for myself, and afterwards I sold it again.

Mr. MONTAGNE: That is all.

RAFAEL ENRIQUEZ, recalled as an adverse witness by the defense, testified as follows:

Direct examination by Mr. KINCAID:

Q. There has never been any separate administration of your mother's estate, has there?

A. When my father died, the estates were verged.

74 Q. There has never been any administration of your mother's estate other than what was administered with your father's estate, is not that a fact?

A. Yes, sir.

Q. There was never any partition of community property between your father and mother, was there?

A. No, sir.

Q. And you, as administrator today, are administering both estates together, are you not?

A. Yes, sir.

Q. And that has always been the case?

A. Yes, sir.

Mr. KINCAID: That is all.

Mr. MONTAGNE: I have no question to ask.

Mr. KINCAID: In one of these piezas, being the smallest one, which has reference to the nullity of the sale of the "Teatro viejo", I desire to offer a motion presented by Montagne & Dominguez on the 18th day of September, 1901, that being the time when the brought in the defendant Francisco Saes Go Tiongeo for the first time. I offer this, first, because they call this estate the testamentaria of their deceased father's parents, and also because they show in there that

they are seeking to accomplish some purpose by both suits, the one of retracto being the one newly tried. I asked that this be marked Exhibit D. 15.

Mr. MONTAGNE: I make the same objection to this Exhibit that I have done to the others of the same nature.

75 The COURT: I- may be received for the present, I will reserve my ruling later on.

Mr. MONTAGNE: Exception.

Mr. KINCAID: I will now offer in evidence the document numbered 1937, the agreement of partition appointing Jose Moreno de Lacalle to do this work, on the 25th day of August, 1896, executed by Don Jose Engracio Monroy y Torres, found in the first pieza, pages 1 to 11 vuelto, and ask that it be marked Exhibit D. 16.

Mr. MONTAGNE: I object to the introduction of this Exhibit on the same grounds as to the other Exhibits of the same nature.

The COURT: It may be received for the present, I will reserve my ruling until I have time to examine this and the other Exhibits of similar character.

Mr. MONTAGNE: Exception.

Mr. KINCAID: That is our case, your Honor.

The COURT: The case is closed.

I certified that the above is a correct transcript of shorthand notes taken by me of the proceedings in Civil Case, Antiguo "El Teatro viejo" entitled Rafael Enriquez vs. Florencio Victoria, et al., in the Court of First Instance for the City of Manila, on the 11th day and 12 day of September, 1905.

(Signed)

WM. W. BARRINGTON,
Official Reporter.

76 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila. Part II.

Antiguo. "El Teatro Viejo".

RAFAEL ENRIQUEZ, in His Right, and as Administrator of the Estate of Antonio Enriquez y Sequera, Deceased; Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudis Enriquez, Antonio Gascon, a Minor, Plaintiffs,

vs.

FRANCISCO SAEZ CO-TIONGCO, FLORENCIA VICTORIA, and CHO-JAN-LING, and FRANCISCO ENRIQUEZ, Defendants.

Decision.

This case is before the Court for trial upon an amended and supplemental complaint, praying for judgment that the sales of the real property described in the complaint to the defendant Francisco Saez Co-Tiongco, and by him to the defendant Cho-Jan-Ling, be declared null and of no effect, and that said property be declared

to be the property of the plaintiffs and of the estate of Antonio Enriquez y Sequera, deceased, and that the defendants have no right or title therein;

77 That the plaintiffs be given possession thereof and that an accounting be had between the parties to the action for the rents and profits collected by the defendants for the use and occupation of said property, and that a receiver be appointed to have charge of said property and collect the rents and hold the same subject to the order of the Court: based upon the allegations that said property belonged to the estate of Antonio Enriquez y Sequera and Ciriaca Villanueva, his wife, both deceased, of whom the plaintiffs and the defendant Francisco Enriquez, were heirs, and the same had been sold at public sale by order of the Court to satisfy a judgment entered in favor of the defendant Florencia Victoria against the estate of said Antonio Enriquez y Sequera, the defendant Francisco Enriquez appearing as administrator thereof, and that the alleged cause of action upon which said judgment was entered was never an obligation against either of said persons Antonio Enriquez y Sequera and Ciriaca Villanueva, or of either their estates after their death, and that upon the commencement of this action a notice of *lis pendens* was filed in the Registry of Property, and subsequently the defendant Francisco Saez Co-Tiongeo sold and transferred to the defendant Cho-Jan-Ling the said property, and that the defendants knew of plaintiffs' rights in said property at the time of sale to the defendant Francisco Saez Co-Tiongeo, and the defendants Francisco Saez Co-Tiongeo and Cho-Jan-Ling knew of the *lis pendens* at the time the transfer of said property was made to the defendant Cho-Jan-Ling.

The defendant Cho-Jan-Ling was made a defendant after the commencement of the action and transfer of said property to him.

78 The action has heretofore been dismissed as against the defendant Florencia Victoria.

The action was once tried by Judge Ambler of this Court but the evidence taken and the proceedings at the trial having become lost, a new trial was agreed to and granted.

Mr. A. A. Montagne appeared in behalf of the plaintiffs; Mr. W. A. Kincaid for the defendant Cho-Jan-Ling; Mr. Alfredo Chicote for the defendant Francisco Saez Co-Tiongeo.

A great mass of evidence was presented at the trial, largely documentary, much of the latter being received by the Court subject to ruling later upon objection made thereto, and when an examination thereof could be made properly.

After an examination of the evidence thus offered and the objections made thereto, it appeared to the Court that a great deal of it was immaterial and irrelevant, but was so closely connected in many instances with that which might be material and relevant that the Court has not indicated any specific ruling upon the objections, except to now state that all the immaterial and irrelevant testimony offered has been disregarded by the Court, and only that which was material and relevant to the issues in the case has been considered, and from that the Court finds the following facts.

That the plaintiff, Rafael Enriquez is the duly qualified and acting administrator of the estate of the said Antonio Enriquez y Sequera, deceased, which includes the community interest therein of Ciriaca Villanueva, the latter's wife, who died in the year 1882, and before the death of said Antonio Enriquez y Sequera;

That the plaintiffs, Rafael Enriquez, Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez and Gertrudis Enriquez are children and heirs of the said Antonio Enriquez y Sequera and Ciriaca Villanueva;

That the plaintiff Antonio Gascon, a minor, represented by his guardian ad litem at the trial of the case, is the only son and heir of Concepcion Enriquez, who was a daughter of said Antonio Enriquez y Sequera and Ciriaca Villanueva, and died after her father and mother died, and before the beginning of this action;

That all these plaintiffs are entitled to bring this action;

That the defendant Francisco Enriquez is the son of the said Antonio Enriquez y Sequera and Ciriaca Villanueva;

That Antonio Enriquez y Sequera died in the year 1884, and that his wife Ciriaca Villanueva died in the year 1882;

That from the death of his wife until his own death the said Antonio Enriquez y Sequera administered their joint estate by himself personally, or by his agent;

That the said Antonio Enriquez y Sequera and said Ciriaca Villanueva acquired during the existence of the marriage contract between them the real property described in the complaint and known as "El Teatro Viejo", and thus was community property, and as such was administered with other by said Antonio Enriquez y Sequera after his wife's death, until he died as before stated;

That when the said Antonio Enriquez y Sequera died, he left a will, in which he named in the first place Ciriaca Villanueva, his wife, as executrix, in the second place, the defendant Francisco Enriquez, and in third place the plaintiff Rafael Enriquez, and his wife Ciriaca Villanueva having already died at the time of the death

of Antonio Enriquez y Sequera, the defendant Francisco Enriquez entered upon the administration of his estate as executor under the will, including the community interest of the estate of the said Ciriaca Villanueva, who died intestate;

That on the 30th day of April, 1886, the defendant Francisco Enriquez was appointed by the Court of First Instance of the City of Manila general administrator of the estate of the said Antonio Enriquez y Sequera, which still included the estate or community interest of Ciriaca Villanueva, which appointment directed him to proceed in the administration of the estate in accordance with the terms of the codicil to the will before mentioned, which required that the estate should be administered extra-judicially, and that the executorship might be extended as long as necessary. The appointment grants unusual powers to the administrator, among others, to perform all acts judicially and extra judicially necessary for the administrator of the estate;

That the defendant Francisco Enriquez continued the adminis-

trator of the estate of said Antonio Enriquez including the interest of Ciriaca Villanueva, until May, 1901, with the exception of a short time in the month of May, 1900, while he was in prison temporarily, during which period the plaintiff, Rafael Enriquez administered as special administrator, having been appointed such by the Court;

That in May, 1901, the plaintiff, Rafael Enriquez, was regularly appointed administrator by the Court, and entered upon his duties, and has continued as such administrator since;

That in the early part of the year 1899 an action was begun by Jose Moreno Lacalle, through his authorized agent, against the defendant Francisco Enriquez, as administrator of the estate, 81 to recover the amount alleged to be due him for professional services performed in connection with the administrator of said estate, the account for services showing that they had been performed at the request of said Francisco Enriquez, Rafael Enriquez, who was present in Manila, in his own interest and those of the other plaintiffs in relation to the estate, and Antonio Enriquez, one of the plaintiffs and one of the heirs to the estate, of said Antonio Enriquez y Sequera and Ciriaca Villanueva.

In that action the defendant Francisco Enriquez was called upon by the Alguazil of the Port to answer in relation to said claim, and to pay the same, and his statement was subsequently taken by the Court, in which he admitted his inability to pay the claim, and indicated the property described in the complaint in this action as property belonging to the said estate, which might be sold under execution to satisfy the debt.

Further proceedings in "juicio ejeturivo" were then had, by which the defendant Francisco Enriquez, as said administrator, was cited for "sentencia in remate" but did not appear, and after the time fixed by law for him to do so, he was declared by the Court to be in default, and judgment, "sentencia in remate," was entered against him, and he was notified of such judgment by copy thereof delivered to him.

After the time fixed by law for taking an appeal from this judgment had passed, and no appeal had been taken, the judgment was declared by the Court to the "firme" of which the said defendant was also notified.

Later further proceedings were had, amongst which was the substitution of the executrix Florencia Victoria y Mendoza under 82 the will of the said Lacalle, he having died in the meantime, as a plaintiff in the case, which was done of June 2d, 1900, more than eight months after the proceedings last above specifically mentioned had taken place;

That commissioners were thereupon appointed by the Court one Abelardo Lafuente on behalf of the plaintiff, and the defendant Francisco Enriquez, with authority to appoint another to appraise the said property, and a report of such appraisal was made to the Court by said Lafuente;

That the property having been appraised as aforesaid, it was advertised for sale by publication of the notice of sale, as directed by the Court;

That before the sale quite a large number of persons made the required deposit with the Court, to entitle them to become bidders at the sale;

That when the sale was held as ordered, several of those qualified to bid, did so, and said property was sold to the defendant Francisco Saez Co-Tiongco, for the sum of Thirty-three thousand nine hundred and fifteen pesos, he being the highest bidder, and that sum being several hundred pesos more than the appraised value of the property, and the sale was approved by the Court;

That sometimes before the sale was made, the plaintiff Rafael Enriquez, in the capacity of Administrator of said estate, and as a representative of certain of his brothers and sisters and the minor plaintiff, Antonio Gascon, attempted to intervene in the matter and finally filed their protest against the sale on the day of the sale, at 8:30 in the morning, the sale taking place at ten o'clock.

83 The protest was not considered then as copies had not been made, except that the Court ordered them to present a copy;

That the balance of the purchase price over the deposit made by the purchaser before the sale, having been paid in to the Court, the Court paid the lien upon the property held by the "Obrias Pias," and the lien was cancelled, and paid the amount due upon the judgment in favor of the said Lacalle which had been approved by the defendant Francisco Enriquez, and ordered by the Court, including costs, and the balance received from the sale was deposited in the Monte de Piedad.

That it appears from the order of the Court, made on or shortly after October 3rd, 1900, that the said Francisco Enriquez not issuing the deed of sale of said property to the purchaser, the Court ordered that the proper documents of the judicial sale be made, and official copies given to the purchaser, which was done, and the purchaser, the defendant Francisco Saez Co-Tiongco, was given possession of the property, and the sale was recorded in the Registry of Property, and that the purchaser did not then know there was any question about the sale of the property, or that the plaintiff, Rafael Enriquez, and his co-heirs, were protesting the sale;

That the plaintiffs herein, having knowledge of the entry of judgment in favor of said Lacalle, through his executrix, and of the sale of said property, did not appeal therefrom, nor was any appeal made, but the plaintiffs herein, recognizing said sale on the 25th of September, 1900, commenced an action in the Court of First Instance against the defendant Francisco Saez Co-Tiongco to take

84 back the property sold, the plaintiff Rafael Enriquez having before borrowed the money to deposit in Court, for the purchaser, the defendant Francisco Saez Co-Tiongco, as the price of repurchase the amount which he the said purchaser had paid;

That this action was prosecuted to a finality, and judgment entered on the 20th day of September, 1901, dismissing it, from which judgment no appeal was taken;

That in July, 1902, the owners of the property were ordered by

the authorities of the City of Manila to remove the buildings then on said property, they having been condemned, which was done, and another building was erected thereon of great value by the defendant Cho-Jan-Ling;

That after this action was commenced the notice of lis pendens as to said property was made and delivered to the Chief of the Bureau of Registry of Property, personally, but the notice was not filed in the Registry until after Cho-Jan-Ling had purchased said property from the defendant Francisco Saez Co-Tiongeo, and the property had been transferred to and possession thereof had been delivered to him, the said Cho-Jan-Ling and that he Cho-Jan-Ling had not notice of claim or protest against his grantor's title.

The conclusions are:

That Rafael Enriquez is the administrator of the estate of Antonio Enriquez y Sequera, deceased, including the community interest of Ciriaca Villanueva, deceased wife of Antonio Enriquez y Sequera;

That the plaintiffs Rafael Enriquez, Antonio Enriquez, Trinidad Enriquez, Cayetan Enriquez, Rosario Enriques, and Gertrudis Enriquez, are the children and heirs of said Antonio Enriquez y Sequera and Ciriaca Villanueva, deceased;

That the plaintiff Antonio Gascon is the only son and heir of Concepcion Enriquez who was a daughter and heir of the said Antonio Enriquez y Sequera and Ciriaca Villanueva, she having died after they did;

That all these plaintiffs are in the capacity stated, entitled to bring this action;

That the estate administered by the defendant Francisco Enriquez, as the executor under the will of his father Antonio Enriquez y Sequera, included the community interest therein of his mother Ciriaca Villanueva, who died previous to the death of his father, incurred a liability partly by the direction of the said executor and partly by the plaintiffs herein, who are joint heirs to both interest in the property, and the whole property administered upon was responsible for the satisfaction of the liability, and judicial proceedings having been begun for the satisfaction of the liability, and judgment entered against the administrator of the estate, that the property belonging to the estate, including the community interest aforesaid, might be sold for the satisfaction of the judgment, and that the sale thus made by order of the Court entering judgment, is valid, particularly when a large part of the proceeds of the sale were applied in extinguishing a community debt, incurred during the lifetime of both parties to the community;

That Francisco Enriquez, as executor of his father's estate, was properly administrator thereof,—including the community interest therein of his mother Ciriaca Villanueva, the community property never having been partitioned and the community interest of his mother being administered by his father at the time of his death,—at the time of the commencement of the “juicio ejecutivo” and entry of judgment thereunder, as related in the finding of fact herein, particularly when his father's will provided for

all necessary extension of time in closing the administration of the estate, and when he had been appointed administrator by the Court having jurisdiction thereof, and as such was the proper person against whom to bring the "juicio ejecutivo";

That while the parties may not be estopped by entry of judgment in "juicio ejecutivo," and may again investigate the matter by proceedings at law, and while the plaintiffs might have been entitled to intervene in the "juicio ejecutivo," yet they having notice are estopped from setting aside the sale ordered, when they failed to appeal from the judgment of sale, and the sale was perfected, and an innocent purchaser intervened, particularly when they recognized the sale by bringing action for the repurchase of the property sold, as persons interested therein;

That the judgment of sale made by the Court in the "juicio ejecutivo" was not void, and cannot now be so declared, but might be voidable by proper proceedings had in the action wherein the parties to the judgment entered are still parties;

That the defendant, Francisco Saez Co-Tiongco, having purchased and taken possession of the property in question at a judicial sale, without notice of claim or protest against it, is an innocent purchaser thereof;

That the defendant, Cho-Jan-Ling, having purchased from the defendant Francisco Saez Co-Tiongco, and taken possession of the property in question, without notice of any irregularity in the title of his grantor, and without notice of pending action, is
87 an innocent purchaser and holder thereof;

That the innocent purchaser, having paid the purchase price, cannot be deprived of the property purchased, by the plaintiffs, at least without the return of the purchase price, and being reimbursed for expenditures made and losses incurred, which the plaintiffs have not proposed to do;

That the plaintiffs are not entitled to any of the relief prayed for in their complaint.

Let judgment be entered dismissing the action against the defendants, with costs in favor of the defendants and against the plaintiffs.

Manila, P. I., May 31st, 1906.

(Signed)

A. S. CROSSFIELD, *Judge*.

To-day, June 4, 1906, letters of notification of the foregoing decision were sent to the parties.

(Signed)

JOSE CASIMIRO,

Deputy Clerk.

88 Be it also remembered that, Plaintiffs upon being notified of the foregoing judgment duly and regularly excepted to the same.

Be it also remembered that, On the fourth of June, 1906, plaintiffs filed a motion in the aforesaid cause, which motion is as follows:

(Title.)

Now come the plaintiffs in the above entitled cause and ask the Court to strike out from the judgment heretofore entered in this cause the conclusions of law and judgment and enter judgment in favor of the plaintiffs, for the reason that the said conclusions of law and judgment are contrary to law and plainly and manifestly against the findings of fact contained in the said judgment.

Be it also remembered That on the — day of June, 1906, the Court overruled the said motion, to which ruling of the Court the plaintiffs duly and regularly accepted.

Be it also remembered, that on the fourth of June, 1906, plaintiffs filed a motion for a new trial, which said motion was as follows:

(Title.)

Now come the plaintiffs in the above entitled cause and pray the Court to vacate and set aside the judgment heretofore entered in this action, and that a new trial be had for the following reasons, to-wit:

1. The evidence is not sufficient to justify the judgment of this Court.

2. The conclusions of law are plainly and manifestly against the weight of the evidence.

89 3. The judgment of this Court is contrary to law.

This motion is based upon the record and proceedings in the said action and the testimony taken therein.

Be it also remembered, That on the 12th of June, 1906, the foregoing motion for a new trial was overruled by the Court and the defendants thereupon duly and regularly accepted thereto.

Be it also remembered, That plaintiffs, desiring to obtain from the Supreme Court of the Philippine Islands a review of all the orders, rulings, decrees and judgments entered in the said cause, duly notified by the Court of their intention to prosecute a bill of exceptions, which said bill of exceptions was duly settled and allowed by the trial court on the 23rd of June, 1906.

Be it also remembered, That on the 27th of July, 1906, the record and proceedings in the above entitled cause were duly filed in the Office of the Clerk of the Supreme Court of the Philippine Islands.

Thereafter, to-wit, on the 18th day of September, 1906, counsel for appellants filed his brief in the Supreme Court of the Philippine Islands and assigned the following errors:

1. The Court erred in finding that the defendant Francisco Enriquez was the administrator of the estate of Ciriaca Villanueva, deceased.

2. The Court erred in finding in this action that the alleged professional services of the Attorney Jose Moreno Lacalle were performed at the request of plaintiffs Rafael Enriquez and Antonio Enriquez, and in substantially declaring that plaintiffs are legally

bound by the judgment rendered in the "executive action" of Florencia Victoria against Francisco Enriquez.

90 3. The Court erred in finding that the Estate of Antonio Enriques y Sequera, deceased incurred a liability for the alleged claim for professional services of the Attorney Jose Moreno Lacalle, and that the property subject of this — was legally sold to satisfy said alleged liability.

4. The Court erred in finding that the Estate of Doña Ciriaca Villanueva, deceased, incurred a liability for the alleged claim for professional services of the Attorney Jose Moreno Lacalle, and that the property subject of this action was legally sold to satisfy said alleged liability.

5. The Court erred in finding that the defendant Francisco Enriquez, as Administrator, was *exclusively* the proper party defendant in the "executive action" of Florencia Victoria against Francisco Enriquez.

6. The Court erred in finding that plaintiffs were not permitted to intervene in the "executive action" of Florencia Victoria against Francisco Enriquez, for the reason only that "copies had not been made".

7. The Court erred in finding in substance that plaintiffs should have appealed the said "executive action" of Florencia Victoria against Francisco Enriquez, and that therefore they are estopped from setting said sale aside.

8. The Court erred in finding that the defendant Francisco Saez Co-Tiongco, having purchased the property at judicial sale without notice of claim or protest against it, is an innocent purchaser thereof.

9. The Court erred in not finding the date when plaintiffs caused their Notice of Lis Pendens herein to be filed in the office of the Registrar of Land Titles.

91 10. The Court erred in finding that said notice of Lis Pendens was filed after the purchase of said property by the defendant Cho Jan Ling from the defendant Francisco Saez Co-Tiongco, and that therefore said defendant Cho Jan Ling is an innocent purchaser.

11. The Court erred in finding that plaintiffs recognized the sale of said property by commencing an action "to take back" said property "juicio de retracto legal" against the defendant Francisco Saez Co-Tiongco.

12. The Court erred in finding that the authorities of the City of Manila ordered the removal of the buildings on said property in July, 1902, and in not finding in that connection that the defendants Co-Tiongco and Cho Jan Ling, or either of them, first commenced the improvements thereon on the 23rd day of November, 1902.

13. The Court erred in finding substantially that the property subject of this action was legally sold to satisfy a judgment rendered against the defendant Francisco Enriquez, as administrator, particularly when a large part of the proceeds of sale were applied in extinguishing a community indebtedness incurred during the lifetime and the marriage community of Doña Ciriaca Villanueva, de-

ceased, and that plaintiffs can not recover said property without returning to the purchaser the purchase price thereof and reimbursing him for his expenses and losses.

Thereafter, towit, on the 7th day of December, 1906, counsel for defendant and appellee, Cho Jan Ling, filed his reply brief in the Supreme Court of the Philippine Islands.

On March 7, 1907, the defendant, Cho-Jan-Ling, served notice that he had dismissed W. A. Kincaid and appointed Gibbs & Gale as his attorneys.

Thereafter, towit, on the 18th of July, 1907, the case having been called for hearing, counsel for plaintiffs and appellants asked that the same be continued; the Court granted his motion and set the case for the 17th of September, on which date, no counsel appearing for either side, the Court considered the case as submitted upon the briefs and took it under advisement.

Thereafter, towit, on the 25th of January, 1908, the Supreme Court of the Philippine Islands rendered its decision in the above entitled cause, which said decision is in the words and figures following, towit:

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3502.

RAFAEL ENRIQUEZ et al., Plaintiffs and Appellants,

vs.

FLORENCIA VICTORIA et al., Defendants and Appellees.

WILLIARD, J.:

Difference having arisen among the heirs of Don Antonio Enriquez and of his wife Doña Ciriaca Villanueva, who died intestate, over the settlement of the estates of both, they, for the purpose of putting an end to litigation, on the 22nd of April, 1891, executed a public document by the terms of which they agreed that Don Jose J. de Icaza, selected by Don Francisco Enriquez, and Don Jose Moreno Lacalle, selected by Don Rafael Enriquez, should make a partition of the property of both estates among the heirs.

Don Jose J. de Icaza, having died, another agreement was made on the ninth day of August, 1896, by which Don Jose Moreno Lacalle was selected to make the partition.

In December, 1897, this arrangement was abandoned and Don Rafael Enriquez and his associates commenced criminal proceedings against Don Francisco Enriquez. The transactions between 1891 and 1898 appear in cases heretofore decided by this Court. (Enriquez vs. Enriquez, 5 Phil. Reps. 668, and Enriquez vs. Enriquez, 8 Phil. Reps., 607.)

Don Jose Moreno Lacalle not having been paid for his services, on the 29th of December, 1898, took steps for the collection thereof

by means of a summary action for the recovery of money (*juicio ejecutivo*). The amount of his claim was 6,290 pesos, for services from 1891 to the 9th of March, 1898, and was for services rendered in the estates of Don Antonio Enriquez and of Doña Ciriaca Villanueva. Don Francisco Enriquez, as executor of his father's will, and administrator of his estate, having admitted the existence of the debt, a formal complaint was filed on the 12th of January, 1899. The citation which was issued upon this complaint was directed to Don Francisco Enriquez in his capacity as executor and administrator of the testate estate of his deceased father, Don Antonio Enriquez. Don Francisco Enriquez, in response to the citation, stated that he had no money with which to pay the debt, and designated as property upon which the execution could be levied, the land here in question, known as "the old theatre of Binondo", and the execution was accordingly levied thereon.

Final judgment was entered in that action on the 8th of August, 1899, ordering the sale of the property levied upon to satisfy the debt. On the 10th day of September, the property above described was sold at public auction by the Judge of the Court of First Instance for 33,915 pesos to the defendant, Francisco Saez Co-Tiongco. A

94 deed thereof was made by the judge, which was duly recorded in the registry of property. Thereafter, the defendant Francisco Saez Co-Tiongco sold the property to the defendant, Cho Jan-Ling, who has erected thereon a building at and expense of 110,741 pesos.

On the 21st of September, 1900, Rafael Enriquez and most of the other heirs of Don Antonio Enriquez and Doña Ciriaca Villanueva brought this action against Florencia Victoria, the executrix of the will of Don Jose Moreno Lacalle, and against Francisco Saez Co-Tiongco, Francisco Enriquez and Cho Jan-Ling, asking that all the proceedings in the action above referred to be declared void. Judgment was entered therein in the Court below on the 31st day of May, 1906, in favor of the defendants. From the judgment the plaintiffs have appealed.

The plaintiffs have changed the grounds on which they claim the right to maintain this action since the presentation of the first complaint. In that complaint, it seems to be claimed that nothing was due to Jose Moreno Lacalle because the payment for his services was conditional upon the final settlement of the estates, when he was to receive two and one-half per cent. upon the value thereof. This claim is based upon a letter written by Sr. Moreno Lacalle to Don Rafael Enriquez upon the 19th day of August, 1896, but an examination of that letter shows that payment in the manner indicated was a mere suggestion and that Sr. Moreno Lacalle therein expressed his willingness to agree to anything which the heirs thought proper. There is no evidence whatever in the case to show that any of the heirs ever accepted this proposition. That the services were performed as claimed, and that they were of the value stated in the account, and

95 that the estates of Don Antonio and of Doña Ciriaca, or the heirs interested therein were responsible for the payment of this debt, are facts all clearly established by the evidence. In fact, at one of the meetings held in the office of Sr. Moreno Lacalle

on the 23rd day of October, 1897, at which were present Don Francisco, Don Antonio (the son), and Don Rafael, who represented all of the plaintiffs, it was agreed that the property here in question should be sold for the purpose, among others, "2. To pay the fees of Attorney Jose Moreno Lacalle, for his services in connection with the liquidation and partition of the said estate." This indicates why Don Francisco pointed out this building as property which might be levied upon to pay the debt here in question.

In an amended complaint filed on the 28th of April, 1902, plaintiffs alleged that Don Antonio was at the time of his death the sole and exclusive owner of the property herein involved. In a second amended complaint, filed on the 10th day of February, 1904, they alleged that the property belonged to the conjugal partnership of Don Antonio and Doña Ciriaca; that Doña Ciriaca died in 1882 and that Don Antonio died in 1884, and that immediately upon the death of Doña Ciriaca an undivided one-half of this property descended to the heirs of Doña Ciriaca, some of whom are the plaintiffs in this case, and that such heirs became at once the owners thereof.

Under this last amended complaint, the claims of the plaintiffs seem to be (1) that the debt in question, having been incurred after the death of Don Antonio and Doña Ciriaca, was not an obligation binding upon their estates, but binding only upon the individuals who employed Don Jose Moreno Lacalle; (2) that even if it were a claim binding upon the estate of Don Antonio, the action for its recovery should have been directed against the heirs and not against the executor; (3) that Don Francisco Enriquez was the executor only of his father's estate and the action having been directed against him in that capacity, the judgment entered therein could in no event bind the estate of Ciriaca Villanueva, and that the sale of one half of the property in question under the judgment rendered in that action was absolutely void, because that half belonged, not to the estate of Don Antonio but to the estate of Doña Ciriaca.

(1) The appellants in their brief cite cases from the American courts to the point that a debt contracted after the death of the testator is not binding upon his estate. The same doctrine as applied to lawyers has been held by this Court in the case of Escueta vs. Julliong, 5 Phil. Reps. 405, and Gonzales vs. del Rosario, 7 Phil. Reps. 140. But these decisions related to the present system of administering estates, as established by the Code of Civil Procedure now in force, and the cases cited by the appellants arose in States where a similar system was in force. They have nothing to do with the method of administering estates of deceased persons which was in force here prior to the adoption of the present Code of Civil Procedure. In the case at bar, the will provided as follows:

"It is likewise his will that the inventory, valuation and partition of this estate be made extrajudicially and by virtue of the power which the law grants him, he forbids any judicial interference in the settlement thereof, conferring upon his executors the necessary authority therefor, without any restriction whatever, and extending their term of office for such period as may be required for this purpose."

Under the Spanish Law of Civil Procedure such a prohibition was lawful only when the testator by his will appointed executors with full power to do all that was necessary for the settlement of the estate, as the testator did in this case. (Art. 1028, Code of Civil Procedure.)

When the transaction here in question took place, there was no judicial proceeding of any kind pending for the settlement of either the estate of Doña Ciriaca or the estate of Don Antonio. In fact, this was distinctly held by the Court of First Instance of Intramuros in its order of the 7th of November, 1899, presented as evidence by the plaintiffs, in which it denied the application of Don Francisco Enriquez to have the partition made by him approved. The court there said: "The procedure set forth in section 1069 with reference to the opposition of the heirs does not apply in this case because such procedure is peculiar to actions for probate, and both by agreement of the parties and the testator's prohibition, the action herein instituted is not of that nature."

That under the law existing prior to the promulgation of the present Code of Procedure this contract bound the two estates in question, there can be no doubt.

(2) The next question presented is this: In order to bind the estate of Don Antonio Enriquez, was the action of Don Jose Moreno Lacalle properly directed against Don Francisco Enriquez as executor of his father's estate?

As has been said before, there was no judicial proceeding pending and the powers of the executor and administrator were ample to do everything necessary for the liquidation of the inheritance. The obligation was an obligation against the estate itself. The

98 only legal representative of that estate was Don Francisco Enriquez, and he was the person against whom any demand by a third person against it should be directed. Nothing to the contrary is held in the two decisions of the Supreme Court of Spain cited by the appellants. In the judgment of the 16th of March, 1864, the testator gave directions to his heir that she pay an allowance to "A". It was held that the action to recover this allowance should be directed against her and not against the executor. In the judgment of the 8th of April, 1865, the action was in fact directed against the heirs and not against the executor, and the question heresuggested was not discussed. So that, so far as the estate of Don Antonio Enriquez is concerned, the action against it was properly directed against Don Francisco Enriquez, as executor, and the judgment rendered in that action is binding upon the estate and upon the heirs interested therein.

(3) The principal reliance of the appellants is upon the proposition that the property here in question belonged to the conjugal partnership, and that upon the death of Doña Ciriaca Villanueva, one-half thereof passed immediately to the heirs and that they became the owners thereof, and that Don Francisco Enriquez, never having been appointed administrator of this estate, the judgment rendered against him as executor of his father's estate was not binding upon the interest of the heirs of Doña Ciriaca.

When a conjugal partnership is dissolved by the death of the

husband, it has already been held by this Court that the settlement of the affairs of that partnership must be had in the probate proceedings for the settlement of the husband's estate. That is, that the husband's estate and the conjugal partnership must all be
99 settled in one judicial proceeding and that the administrator of the husband's estate is the administrator of the affairs of the conjugal partnership. (Alfonso vs. Natividad, 6 Phil. Reps. 240; Prado vs. Lagera, 7 Phil. Reps. 395, and de la Rama vs. de la Rama, 7 Phil. Reps. 745.)

In the case of Alfonso vs. Natividad, the Court said: "The question whether or not this rule for the settlement of the affairs of the conjugal partnership, when it is dissolved by the death of the husband is equally applicable when the partnership is dissolved by the death of the wife, we do not consider." It is necessary now, however, to resolve that question.

The husband is by law the manager of the conjugal partnership. (Art. 1412 of the Civil Code.) His debts, contracted during marriage, are its debts. (Art. 1418.) Upon the death of the wife, he becomes the surviving partner and we do not doubt that he is the person called upon to settle the affairs of the partnership. It could not have been intended that upon the death of the wife, leaving the husband surviving, the property which the husband had administered and in which he was directly interested, should be taken out of his hands and delivered over to an administrator appointed in proceedings for the settlement of his wife's estate, and we hold that where a conjugal partnership is dissolved by the death of the wife, the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated.

It follows from this holding, and from the holding already made in the case of Alfonso vs. Natividad, that when the husband who is the administrator of the affairs of the conjugal partnership,
100 the wife having died, himself dies, his executor or administrator becomes not only the executor or administrator of the property of the husband, but also the administrator of the affairs of the conjugal partnership and that he is the legal representative of that conjugal partnership.

In the case of Alfonso vs. Natividad was an action brought by the administrator of the husband's estate to recover possession of real property which had belonged to the conjugal partnership, and we hold that that action could be maintained not only in respect to the interest of the husband, but also in respect to the interest of the wife. In other words, we held that the representative of the husband was the legal representative not only of the interest of the husband but also of the interest of the wife. That decision practically controls this case.

Upon the death of Doña Ciriaca Villanueva, Don Antonio Enriquez became the legal administrator of the affairs of the conjugal partnership. Upon his death, Don Francisco Enriquez became the legal administrator of such property and when the complaint of Don Jose Moreno Lacalle was directed against Don Francisco Enriquez, as the executor of his father's estate, it was as a matter of

law directed against him also in his capacity as the administrator of the conjugal partnership, and the judgment rendered against him bound not only the interest of Don Antonio in the property in question, but also the interest of Doña Ciriaca.

That Don Francisco was in fact the administrator of both estates from the death of his father is practically admitted by the appellants. It is to be noted, moreover, that when, on May 14, 1900, Don Rafael was appointed by the court provisional administrator on account of the criminal proceedings against Don Francisco, the appointment in terms expressly related to both estates.

101 This case has been before this Court once before (R. G. No. 31), judgment having been rendered herein on the 17th day of October, 1901. That judgment decided none of the questions here involved. It simply held that Don Rafael Enriquez and his brothers had a right to maintain an action for the purpose of having resolved the questions which have here been determined.

The judgment of the court below is affirmed, with the costs of this instance against the appellants.

(Signed)

CHARLES A. WILLARD.

We concur:

(Signed) C. S. ARELLANO.
 " FLORENTINO TORRES.
 " E. FINLEY JOHNSON.
 " A. C. CARSON.
 " JAMES F. TRACEY.

Thereafter, to wit, on the 1st day of February, 1908, counsel for appellants, having been notified of the decision of the Supreme Court, filed their exception thereto, and moved for a rehearing upon the said decision, which said motion for rehearing was denied by the Court on the third day of February, 1908.

Thereafter, to wit, on the 6th day of February, counsel for plaintiffs and appellants excepted to the order of the Court overruling their motion for rehearing.

Thereafter, to wit, on the 18th day of February, 1908, a final judgment was entered in the Supreme Court in the above entitled cause, which said judgment is in the words and figures following, to wit:

102 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

RAFAEL ENRIQUEZ et al., Plaintiffs and Appellants,

vs.

FLORENCIA VICTORIA et al., Defendants and Appellees.

February 18, 1908. Judgment Book 5. Docket No. 3502.

This Court having regularly acquired jurisdiction to try the above entitled cause, which has been submitted by both parties for decision,

after consideration thereof upon the record and proceedings therein, its decision and order for judgment having been filed on the 25th of January, 1908;

It is hereby ordered that the judgment of the Court of First Instance of Manila, dated May 31st, 1906, be and the same is hereby affirmed, with the costs of this instance against the appellants.

It is further ordered that defendants recover from plaintiffs the sum of P40 as costs in this Court.

(Signed)

J. E. BLANCO.

Clerk of the Supreme Court of the Philippine Islands.

[SEAL OF COURT.]

Thereafter, to wit, on the second day of June, 1908, Attorneys for plaintiffs prayed for an appeal, which was duly allowed on the same day, from the final judgment and decree of the Supreme Court of the Philippine Islands, for the reasons specified in the attached assignment of errors, filing at the same time an affidavit as to
103 the value of the property in litigation and bond for costs, which said prayer of appeal, allowance thereof, assignment of errors, affidavit and bond are in the words and figures following, to wit:

R. G. No. 3502.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

RAFAEL ENRIQUEZ (in His Own Name and as Administrator of the Estate of Antonio Enriquez, Deceased), Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudis Enriquez y Antonio Gascon, Minor, Plaintiffs,

VS.

FRANCISCO SAEZ GO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO ENRIQUEZ Y CHO JAN-LING, Defendants.

The above named plaintiffs, conceiving themselves aggrieved by the judgment made and entered on the 18 day of February, nineteen hundred and seven, in the above entitled case, do hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.
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(Signed)

HARTIGAN & ROHDE,

Attorneys for Plaintiffs.

Dated this 29 day of May A. D. 1908.

The foregoing claim of appeal is allowed.

(Signed)

FLORENTINO TORRES,

Associate Justice.

Dated this 2nd day of June, A. D. 1908.

R. G. No. 3502.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RAFAEL ENRIQUEZ, ANTONIO ENRIQUEZ, TRINIDAD ENRIQUEZ, CAYetano Enriquez, Rosario Enriquez, Gertrudis Enriquez, and Antonio Gascon, a Minor, Plaintiffs and Appellants.

vs.

FRANCISCO SAEZ GO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO ENRIQUEZ and CHO-JAN-LING, Defendants and Appellees.

The plaintiffs pray an appeal from the final decree of this Court to the Supreme Court of the United States, and assign for error:

I.

That the Court erred in affirming the judgment of the Court of First Instance dismissing plaintiffs' action;

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II.

The Court erred in holding that the estates of Antonio Enriquez and of Doña Ciriaca Villanueva, or the heirs interested therein, were responsible for the payment of the debt upon which Francisco Enriquez was sued as executor and administrator by José Moreno Lacalle;

III.

The Court erred in holding that the property in question in this suit was legally sold under and by virtue of the judgment and execution in the case of José Moreno Lacalle against Francisco Enriquez, as Executor and Administrator;

IV.

The Court erred in holding that Francisco Enriquez was at any time administrator (administrador) of the estates of either Antonio Enriquez or Da. Ciriaca Villanueva;

V.

The Court erred in refusing to declare void the sale made by the Court of First Instance of Manila of the property in question in this suit to Francisco Saez Go-Tiongco;

VI.

The Court erred in holding that under the law as it existed in the Philippine Islands prior to the change made under American sovereignty, real property of estates of deceased persons could be sold under execution without giving the heirs an opportunity to be heard.

VII.

The Court erred in rendering judgment acquitting defendants of plaintiffs' complaint.

The plaintiffs pray that the decree of the Supreme Court of the Philippine Islands be reversed.

106 Manila, May 29, 1908.

(Signed)

HARTIGAN & ROHDE,

Attorneys for Plaintiffs.

R. G. No. 3502.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

RAFAEL ENRIQUEZ et al., Plaintiffs and Appellants,

vs.

FLORENCIA VICTORIA et al., Defendants and Appellees.

PHILIPPINE ISLANDS,

City of Manila, ss:

Rafael Enriquez, being first duly sworn on oath, deposes and says, that he is one of the plaintiffs and appellants in the above entitled action, and that the real property the title to and possession of which is involved therein is of the value of Fifty thousand dollars, gold coin of the United States.

(Signed)

RAFAEL ENRIQUEZ.

Subscribed and sworn to before me this 25th day of May, 1908, deponent exhibiting to me his cédula numbered F. L. 424585, and dated Manila, April 14th, 1908.

[NOTARY'S SEAL.]

(Signed)

ROMAN J. LACSON,

Notary Public.

My Commission expires December 31st, 1908.

107 Know all men by these presents: That we, Rafael Enriquez as principal, and Antonio Enriquez and Trinidad Enriquez as sureties, are held and firmly bound to Francisco Saez Go-Tiongco Florencia Victoria, Francisco Enriquez y Cho-Jan-Ling in the full sum of One thousand pesos, to be paid to the said Francisco Saez Go-Tiongco et al. or their assigns: to which payment well and truly to be made, we and ourselves, our heirs, executors and administrators jointly and severally by the presents.

Sealed with our seal and dated this 2 day of June, in the year of Our Lord one thousand nine hundred and eight.

Whereas lately in the Supreme Court of the Philippine Islands, in a suit depending in said Court between Rafael Enriquez et al. plaintiffs and the Francisco Saez Go-Tiongco et al. defendants, a decree was rendered against, the said plaintiffs, and the said plaintiffs having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit and a citat-

tion directed to the said Francisco Saez Go-Tiongco et al. citing and admonishing the same to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 30th day of September, 1908;

Now the condition of the above obligation is such that if the said plaintiffs shall prosecute their appeal and answer all damages and costs if they fail to make their plea good, then the above
108 obligation to be void, else to remain in full force and virtue.

(Signed)

RAFAEL ENRIQUEZ.

ANTO. ENRIQUEZ.

TRINIDAD ENRIQUEZ.

JAVIER LOPEZ DE ARBIZU.

Husband of Trinidad Enriquez.

Signed, sealed and delivered in the presence of:

(S'g'd)

WM. J. ROHDE.

Approved:

F. TORRES,

Associate Justice, Supreme Court.

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R. G. No. 3502.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RAFAEL ENRIQUEZ (in His Own Name and as Administrator of the Estate of Antonio Enriquez, Deceased), Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudis Enriquez y Antonio Gascon, Menor, Plaintiffs,

versus

FRANCISCO SAEZ GO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO ENRIQUEZ Y CHO-JAN-LING, Defendants.

The above named plaintiffs, conceiving themselves aggrieved by the judgment made and entered on the 18 day of February nineteen hundred and seven, in the above entitled case, do hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

HARTIGAN & ROHDE,

Attorneys for Plaintiffs.

Dated this 29 day of May A. D. 1908.

The foregoing claim of appeal is allowed.

FLORENTINO TORRES.

Associate Justice.

Dated this 2nd day of June A. D. 1908.

110

R. G. No. 3502.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RAFAEL ENRIQUEZ (in His Own Name and as Administrator of the Estate of Antonio Enriquez, Deceased), Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudis Enriquez y Antonio Gascon, Menor, Plaintiffs,
versus

FRANCISCO SAEZ GO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO ENRIQUEZ Y CHO JAN-LING, Defendants.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to Francisco Saez Go-Tiongco, Florencia Victoria, Francisco Enriquez y Cho Jan-Ling, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the Clerk's office of the said Court on the 2nd day of June, 1908, in a cause wherein Rafael Enriquez et al. are appellants and you are appellees, to show cause, if any, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Florentino Torres, Associate Justice of the Philippine Islands, this 2 day of June 1908.

FLORENTINO TORRES,

*Associate Justice of the Supreme
Court of the Philippine Islands.*

Service of a copy of the within citation is admitted this 3 day of June, 1908.

W. A. KINCAID,

Attorney for Appellees,

By J. B.

Service of a copy of the within citation is admitted this 13th day of June, 1908.

GIBBS & GALE,

Attorneys for Cho Jan Ling, Appellee.

1

EXHIBIT "D-1."

Number nine hundred and ninety-eight.—In Manila, this fourth day of October, eighteen ninety-nine. Before me, Enrique Barrera y Caldes, Doctor of Civil and Canonical Law, and a Notary Public in and for this City of Manila, personally appeared: Antonio Enriquez y Villanueva, of age, married, and a resident of this City, with personal cedula or certificate of registration number sixty-eight thousand, six hundred and fifty-five, issued by the City Assessor and Collector of This Province; Rafael Enriquez y Villanueva, artist, of age, married and a resident of this City, with personal cedula, or registration tax certificate, number fifty-four thousand, five hundred and eighty-seven, issued by the Assessor and Collector of this Province; and Trinidad Enriquez y Villanueva, accompanied by her husband, Francisco Javier Lopez Arbizú, a dentist, both of age, and residents of this City, with personal cedulas or certificates of registration numbered fifty-four thousand, five hundred and eighty-six and fifty-four thousand five hundred and eighty-five, respectively, issued by the Assessor and Collector of this Province. And having in my judgment the necessary legal capacity to execute this instrument, nothing to the contrary to me appearing, Antonio Enriquez y Villanueva, Rafael Enriquez y Villanueva and Trinidad Enriquez y Villanueva, the latter having previously obtained the necessary permission and consent of her aforesaid husband, Francisco Javier Lopez Arbizú, which said permission and consent were asked for and granted in my presence, to which I certify, freely and of their own will stated:

That they hereby grant and confer ample and sufficient power and such as may be necessary in favor of Attorney Felipe Gonzales

2 Calderon, of age, married and a resident of this City, for them and in their stead, and by the exercise of their rights and action to represent, assist and defend them in all actions to which they may be parties, either in the justice courts, the Courts of First Instance, the Supreme Court of the Philippine Islands or any other ordinary tribunals of general or a limited jurisdiction, and to appear for them in all civil or criminal actions which may be instituted by them; to institute and prosecute acts of conciliation, or voluntary jurisdiction, criminal actions as well as civil, ordinary, executive, possessory, and summary proceedings, actions in intervention in abintestate or testate proceedings, bankruptcy proceedings, or any other actions or proceedings known to the law; to file complaints, answers, informations and such other pleadings or petitions as may be necessary; to file exceptions; to offer testimony relating to judicial confessions, as well as documentary, expert or oral evidence, and such other proof permitted by law; to rebut and disprove whatever may be said or done contrary to our claims; to accept service of notices and summons; and to impeach judicial officials when necessary; to impeach witnesses; to ask for the reconsideration of any order; to prosecute the remedies of appeal, nullity, and petition; to sue out complaints and writs of error and revision, and also such civil or criminal remedy as may be proper against any

ruling, order or judgment whatever, dismissing such appeals and recourses thus prosecuted by him as he may see fit; to ask for attachments or to have same dissolved; to ask that property in litigation be sold and executions issued, following the procedure fixed by law for the trial and determination of all actions or proceedings in which he may intervene. Rafael Enriquez y Villanueva states that by a public instrument numbered four hundred and eighteen, executed in the city of Madrid, before the Notary Public of that City, Pablo Pedro Vich y Ferrer, acting in the absence of the Notary

Federico Plana Felliza, Rosaria Enriquez y Villanueva, Cayetano Enriquez y Villanueva, Gertrudis Enriquez y Villanueva, and Trinidad Enriquez, conferred upon him the necessary power of attorney for the purposes therein set forth, a certified copy of which power of attorney he has exhibited to me the undersigned Notary, the material part of which said *part of Attorney* is as follows: "Number four hundred and eighteen.—In the City of Madrid, this sixteenth day of November, 1895.—Before me, Pablo Pedro Vich y Ferrer, a Notary of the Illustrious Notaries Association of this City, and a resident thereof, acting in the absence of the Notary Public Federico Plana Felliza, personally appeared:—Rosario Enriquez Villanueva, thirty-six years of age, a widow and pensionist and a resident of this City and at present living at number fifteen Conde de Aranda street, all of which appears from the personal cedula of the ninth class which she has exhibited to me, and which I have returned to her, issued on the seventeenth of September of the present year.—Cayetano Enriquez Villanueva, twenty-six years of age, married, a soldier, residing at number fifteen Conde de Aranda street, of this City, all of which appears from his personal cedula, numbered nine thousand, seven hundred and twenty, issued August thirtieth of this year, which he has exhibited to me.—Gertrudis Enriquez Villanueva, twenty-nine years of age, unmarried, and residing at number fifteen Conde de Aranda street, of this City, as appears from her personal cedula issued in the current month and year, and numbered forty-six thousand, four hundred and eighty-five." * * * And the parties having in my judgment the necessary legal capacity which they state is not limited or restricted in any way, to execute this power of attorney, voluntarily of their own will say: That they hereby confer such special and as ample a power as may be in law required upon their brother, Rafael Enriquez y Villanueva, of age and a resident of this City in order that in behalf of each and all of them he may execute the

4 following acts with reference to the property which they have in Manila, Philippine Islands, from the estate of their deceased parents Antonio Enriquez and Cirina Villanueva." * * *

"7. To appear before the municipal justices in all acts of conciliation and verbal actions accompanied by a person of his confidence, presenting the complaints which he may deem necessary and taking such exceptions as may be necessary, abiding by any agreement entered into or whatever judgment may be rendered, if he considers the same favorable, or procure the nullity or reversal of such judgments as may be unfavorable.—8. To appear before all

the Audiencias, Courts of First Instance, or Tribunals, and before the competent authorities, in all civil or criminal actions, whether of voluntary jurisdiction, administrative or otherwise, administrative investigations or any other proceedings in which the grantors of this power may be interested; to take such steps as his grantors themselves would take, presenting such petitions as may be requisite and necessary until the final determination of such actions and proceedings in any courts whatsoever. All of which they acknowledge in the presence of the witnesses to this instrument, Zacarias Lopez Sanz and Domingo Saldon Mora, both of age and residents of this City, known to the grantors of this power who identified them to me. They having been informed of the rights which they have under the law to read this document themselves, they waived such right, whereupon I proceeded at their request to read the same, the contents of which they ratify, subscribing this instrument in the presence of the aforesaid witnesses. To all of which, and as to the identity of the said witnesses, their occupation and residences, I the undersigned notary, certify.—Rosario Enriquez.—Gertrudis Enriquez,—Trinidad Enriquez.—Cayetano Enriquez.—Zacarias Lopez,—

5 Domingo Saldon Mora Signado.—Pablo Pedro Vieh.—

Rubric. The foregoing is a true and correct copy of the power of attorney authorized by the Notary mentioned herein on the 23rd of November, and which has been exhibited to me.—That by virtue of the right which he has under section one thousand seven hundred and twenty-one of the Civil Code now in force, Rafael Enriquez y Villanueva by these presents solemnly declares: that he hereby delegates to the said Attorney Felipe Gonzales Calderon the power conferred upon him as aforesaid by Rosario, Cayetano, and Gertrudis, surnamed Enriquez y Villanueva under and by virtue of the instrument of the sixteenth of November, eighteen ninety-five, above-mentioned, but this delegation and substitution of power should be understood to be limited to the acts set forth and specified in this instrument, with reference to which he delegates to the said Attorney such power as has been conferred upon him as agent for his grantors. All of which they acknowledge in the presence of the witnesses to this instrument, Jose Rosado y Calvo, practicing attorney, and Tomas Pilar y Pimentel, both of age and residents of this City; and all the parties to this instrument having read these presents, by virtue of the rights which the law gives them, ratify and signed the same. To all of which, as well as to the identity occupation and residence of the parties hereto, I certify.—Rafael Enriquez, Trinidad Enriquez, Francisco Javier Lopez Arbizu, Antonio Enriquez,—Jose Rosado y Calvo—Tomas Pilar—(Signed) Enrique Barrera y Caldez.—There is a rubric and notary's seal affixed.—This is a second true copy of the original on file in the protocol of the year eighteen ninety-nine of public instruments of my office, under number nine hundred and ninety-eight, to which I certify.

6 And at the request of Rafael Enriquez y Villanueva, one of the parties to the said instrument, I issue this copy, consisting of four sheets of stamped paper for the current year, which I have signed, rubricated and sealed with my seal of Office

in Manila, this ninth day of August, 1900, having made a memorandum of the issuance of this copy upon the original instrument, to which I certify.—Enrique Berrera y Caldes.—Seal: Nihil Prius Fide Notaria de Don Enrique Barrera y Caldes, Manila. This copy is sufficient for the purpose thereof.—Manila, August 11, 1900.—Felipe Calderon.

The foregoing is a true copy of its original, appearing on pages one to eight of the record of the case instituted by Felipe Calderon in behalf of Rafael Enriquez et al. to recover a certain piece of property sold at public auction, to which I certify. This copy was taken from the said record and consists of seven pages, to which I certify, in Manila, this twenty-seventh day of September, 1900.—Franco. R. Cruz.

To the Court of First Instance of Binondo:

Felipe G. Calderon as attorney and counsel for Rafael Enriquez and his brothers, as shown by the certified copy of the power of attorney hereto attached appears and represents: That he has been informed that notwithstanding his opposition and his petition to have the judicial sale of the property known as the "Old Theater" belonging to the estate of the deceased Antonio Enriquez y Sequera and Ciriaca Villanueva, the parents of my clients, suspended, the same took place and the property was sold on the tenth instant to the Chinaman Go-Tiango as the highest bidder, for the sum of thirty-three thousand nine hundred and fifteen pesos.

On account of the judicial sale of the property in question, 7 Rafael Enriquez and his brothers, all of whom I represent, have lost their right to file the petition in intervention which they would have otherwise presented, that is, had they been cited and given an opportunity to be heard in the executive action in which the aforesaid property was attached and sold to satisfy the claim of Jose Moreno Lacalle against Francisco Enriquez as testamentary executor of the deceased, Don Antonio, which claim the said Francisco Enriquez should have resisted, not only because it could not legally exist, but because such claim could not have been allowed without the knowledge of the other heirs, as will be hereafter shown.

For this reason, and it being to the interest of Rafael Enriquez and brothers, all of whom I represent, to exercise the right which they have to repurchase the property in question, as heirs and joint owners to and of the said property, I file this petition for the redemption of the same upon the following

Facts.

1. The property known as the "Old Theater" belonged and was included with the property set out in the inventory of the estates of the deceased Antonio Enriquez and Ciriaca Villanueva, still undivided among their ten children and heirs, as appears from the partition proceedings submitted to the Court of First Instance of Intramuros for approval.

2. Rafael Enriquez and his five brothers, all of whom I represent, as the legitimate children and heirs of Antonio Enriquez, so recognized by the latter in his will, and admitted as such in the proceedings relating to the partition of his estate and that of his deceased wife, Ciriaca Villanueva, are mutual successors and co-participants to and in the property above described.

8 3. This property, as has been said, was sold at public auction without the knowledge of, or notice to the other heirs on the tenth instant for the sum of thirty-three thousand, nine hundred and fifteen pesos, to a stranger, the Chinaman Francisco Saez Co-Tiongeo, in an action against Francisco Enriquez as executor and one of the heirs of Antonio Enriquez, deceased.

To the foregoing facts the following are the applicable principles of

Law.

1. Legal redemption is the right to be subrogated, with the same conditions stipulated in the contract, in the place of the person who acquires the thing by purchase or in payment of a debt. (Section 1521 of the Civil Code.)

2. A co-owner of the thing held in common may exercise the redemption in case the shares of all the other co-owners, or of any of them, are sold to a third party.

3. The property known as the "Old Theater" sold as aforesaid to the Chinaman Francisco Saez Co-Tiongeo, belonged to the spouses Antonio Enriquez and Ciriaca Villanueva, and therefore Rafael Enriquez and his brothers, as the legitimate children and heirs, recognized as such in the will of the said Antonio Enriquez deceased, and in the partition proceedings of the latter's estate, have the indisputable right to redeem the property in question for the same price and under the same conditions under which it was sold to the Chinaman Co-Tiongeo. (Section 1522 of the Civil Code.)

4. That the judicial sale of the aforesaid property according to the statement of the actuary Francisco Cruz made yesterday, the 20th instant, was approved by the court on the same day on which it took place, which sale is now pending the execution of the necessary conveyance, the period of nine days fixed by section 1524 of the

9 Civil Code and the period provided for in section 1600 of the Code of Civil Procedure, not having therefore expired.

5. For the purpose hereinbefore stated, I hereby deposit in the Court a check duly certified by the Hong Kong Bank for the sum of thirty-three thousand, nine hundred and fifteen pesos, the amount for which the said property was sold, as required by law.

6. That my clients' personality and title to the said property is shown by the will, and the inventory of the property of the estates of Antonio Enriquez and his wife Ciriaca Villanueva, deceased, now on file in this Court of Intramuros.

7. This right of redemption being a legal one, Rafael Enriquez and his brothers, all of whom I represent, hereby promise to hold and preserve the property sought to be redeemed for a period of two

years subject to the conditions provided in paragraph four of the Code of Civil Procedure.

Wherefore, for the reasons stated, they bring this action of redemption arising from the legal rights set forth, and

I pray the Court, as attorney for Rafael Enriquez and his brothers, all of whom I represent, as shown by the certified copy of the power of attorney hereto attached, the sum of thirty-three thousand nine hundred and fifteen pesos, for which the property was sold, having been heretofore deposited in this Court, and the undertaking for the redemption of the said property within two years having been filed, to allow this complaint and after the necessary proceedings to enter judgment in favor of the plaintiff, Rafael Enriquez and brothers for the relief sought; and to order, if deemed necessary, that a copy of this complaint be served upon the Chinaman Francisco Co-

10 Tiongeo, the purchaser of the property, as soon as the plaintiff herein files in this Court a certificate to the effect that the act of conciliation was had without result, and that the costs of this action be taxed against whosoever may oppose the same; and your petitioner will ever pray, etc.

Further, for the purpose of establishing the right of Rafael Enriquez and his brothers to sue as such heirs, and their title to the property in question, known as the "Old Theater", the plaintiffs pray that the actuary of this Court be directed to make a certified copy of the will of Antonio Enriquez, deceased, and of the inventory of the property left by him, or of so much thereof as may be necessary for the purpose of this suit, which said will and inventory are attached to the partition proceedings relating to the said estate on file in this Court of First Instance of Intramuros.

Further, That plaintiffs having to institute on this same day a declarative action to have the claim of Jose Moreno Lacalle for attorney's fees declared null and void, and for the satisfaction of which claim the property known as the Old Theater then in the possession of Francisco Enriquez was sold, also pray that upon notice to the widow of the said Moreno Lacalle, Florencia Victoria, it be ordered that the amount of the claim for attorney fees be deposited should an attempt be made to collect the same, in connection with the declarative action above referred to.

Plaintiffs further pray that, desiring to use the certified copy of the power of attorney filed herewith for other purposes, a duplicate of such power of attorney be made and filed with the case and the original returned to plaintiffs through the Clerk of the Court.

Manila, September 21st, 1900.

(Signed)

FELIPE G. CALDERON.

11

EXHIBIT "D-2."

Monte De Piedad y Caja De Ahorros of Manila.

Director's Office.

No. 57.

On this date there has been deposited in the vaults of this Pious Institution the sum of thirty-three thousand, nine hundred and fifteen pesos, by the actuary of your Court, Francisco R. Cruz, subject to the result of the action brought by Rafael Enriquez against Francisco Saez Co-Tiongco and to the further order of that Court.

Of which I beg to inform Your Honor in pursuance of your order of the twenty-second instant.

God guard your Honor many years.

Manila, September 24, 1900.

(Signed)

EMILIO MORETA.

To the Judge of the Court of First Instance of Intramuros.

12

EXHIBIT "D-3."

To the Judge of the Court of First Instance of Tondo:

Simplicio del Rosario, as attorney for Francisco Saez Co-Tiongco, defendant in the action relating to the repurchase of the property known as the "Old Theater", instituted by the legal representative of Rafael Enriquez and brothers, answering the complaint, states: That the complaint in this case states no cause of action and therefore it is not possible for my client to consent to the same.

I will proceed therefore to impugn it.

Counsel for plaintiff begins by insinuating that the judicial sale of the property in question took place in an executive action instituted by Jose Moreno Lacalle, first, and continued by his heirs, to recover a certain sum of money alleged to be due him from Francisco Enriquez as the testamentary executor of Antonio Enriquez, deceased, the amount this claimed representing the attorney fees alleged to be due to the said Jose Moreno Lacalle for professional services rendered by him in his lifetime, for several years, to the estate in question.

It appears, therefore, that the execution was issued against the estate of the said Antonio Enriquez, represented by the testamentary executor and administrator, Francisco Enriquez, and not against the latter personally. It should be noted that at the public auction held, the share which the said Francisco Enriquez had as heir in the said property was not sold separately but the whole of the property was sold as belonging to the debtor estate.

It would not be amiss to observe that the estate of the Enriquez spouses, for reasons which need not be here mentioned is now in

13 course of administration and that Francisco Enriquez as executor and administrator under the will is the legal representative of the estate and is empowered to sue in behalf thereof and to defend any action or actions brought against it.

Counsel will not enter upon a discussion as to whether the claim for the satisfaction of which execution was issued against the estate, was a just claim, nor whether the property was sold at public auction with or without the knowledge of and upon notice to the other heirs, although such procedure was absolutely unnecessary since there was an administrator of the estate duly appointed who had not been removed from his office, and who must have had the confidence of the other parties interested in the said estate.

I will, however, say that notice of the said judicial sale was duly published by the Court which ordered the same in an action then pending therein and that not only those who were to be bidders at the said sale, but those interested in the estate had knowledge thereof.

Consequently in my opinion this action for the redemption of the property in question does not lie for the reason that the property sold was not one or several parts of a piece of property belonging to one or more heirs, but was the whole of a piece of property belonging to the estate in question, which estate, for the reasons hereinbefore set forth, is now in course of administration.

In order that this answer may conform to the provisions of the procedural law, I will now proceed to establish the following:

14

Facts.

1st. We admit the first two paragraphs of the complaint.

2nd. There was sold, not one or several parts of the piece of property belonging to Francisco Enriquez, or to any other heir, but all, absolutely all, of the piece of property belonging to the estate in question; that is to say, to all of the heirs interested in the same.

3rd. The execution issued against the debtor estate, as well as all other proceedings subsequent to the issuance thereof, down to the judicial sale of the property in question, were directed to and had against Francisco Enriquez as the testamentary executor and administrator of the Enriquez estate. Francisco Enriquez, as such executor, was perfectly qualified to intervene in that action, to acquire rights for the benefit of the estate, and to discharge the obligations of and liabilities incurred by the same.

From these facts, there arise the following:

Conclusions of Law.

1. We adopt the first two conclusions of law set out in the complaint, and contend that the complaint states no cause of action, and that those conclusions of law are not applicable to this action, for the reason that the right of redemption as stated in the second paragraph of the complaint, which is a quotation of section 1522 of the Civil Code, can only be exercised by a co-owner of a thing held

in common in case the shares of all of the other joint owners, or of any of them, are sold to a third party. Consequently, neither the share to which Francisco Enriquez as one of the joint owners of the property in question nor that of any of the other heirs, but the whole of the property in question, having been sold, as belonging to the debtor estate, none of the heirs can have a right to redeem the same.

15 2. The Enriquez estate, being in course of administration and represented by the executor and administrator, Francisco Enriquez, who had not been removed, the execution issued against the estate was regular, and there was no reason why the proceedings should be directed against any one but him, Francisco Enriquez, who was the legal representative of it. Therefore, any acts or omissions by the said Francisco Enriquez, as executor and administrator of the estate in question, bound such estate, and consequently all of the heirs interested therein.

3. The contract of purchase and sale having been executed with all the essential requisites under the Civil Code, my client, who was the purchaser, has irrevocably acquired the title to the property in question from all of those interested in the estate, in whose behalf the Court made the transfer, the legal representative of the said estate having failed so to do. Therefore, the vendors, towit, all of the heirs under the will, having an interest in the said estate, even should they desire to go against their own act, which was the act of the person who represented them, for the reason that the estate was in course of administration, are estopped from bringing an action to redeem the property, although, perhaps, they may bring an entirely different action after complying with the requisites specifically provided by law in order to have the contract rescinded or otherwise annulled.

The undersigned prays that, considering this as his answer to the complaint herein filed, it be declared that this action of redemption does not lie, and that judgment be entered in favor of the defendant Francisco Saez Co-Tiongco, with the costs against the plaintiff.

Manila, January 9, 1901.

(Signed)

SIMPLICIO DEL ROSARIO.

16

EXHIBIT "D-4".

To the Court of First Instance of Intramuros:

Charles Davis, as counsel for Rafael Enriquez and co-litigants, as shown by the certified copy of his power of attorney on file in this Court, appears and respectfully represents:

That Rafael Enriquez and his brothers, whom I represent, are plaintiffs in two separate actions now pending in this Court, to wit: an action relating to the nullity of the executive action instituted by Jose Moreno Lacalle against Francisco Enriquez to recover a certain sum as attorneys' fees, wherein the property known as the "Old Theater" on Calle Dasmariñas of the District of Binondo, belonging to the estates of Antonio Enriquez and Ciriaca Villanueva, deceased, was sold under an execution, and the action for the re-

demption of the said property brought by the same plaintiffs against the purchaser thereof, Francisco Saez Co-Tiongco.

Both actions are now pending in this Court and their principal object is to recover the possession of the property in question, which belongs to the Enriquez estate. Therefore, both actions are closely connected with each other to the extent that the continuance of one depends upon the decision which may be rendered in the other on account of the identity of the subject-matter in each case.

This circumstance makes it impossible and even unnecessary to proceed at this time with the action relating to the redemption of the property, for the reason that the continuance of this action depends upon the final decision that may be rendered in the declarative action relating to the nullity of the executive action instituted by those whom I represent against the widow of Moreno Lacalle and in case that judgment should be entered in favor of the plaintiff

the execution and sale thereunder would be of no effect and
17 there would be no occasion for the redemption of the property and the action in which this is sought could be proceeded with in case that such execution and sale be not set aside. It is evident that the suspension of the proceedings in the case which has for its object the redemption of the property, which is an obstacle to the progress of the declarative action above referred to, becomes necessary and should be so decreed in accordance with sections 725, 727 and paragraph 3 of section 728 of the Code of Civil Procedure. And in order to avoid any confusion or inconsistencies in the two declarative actions in question, and without prejudice to continuing the said action if necessary, I pray the Court that, upon consideration of this petition a copy of which is hereto attached, it be ordered that this petition be attached to the record in the action relating to the redemption or repurchase of the property known as the "Old Theater", instituted by those whom I represent through their attorney, Felipe G. Calderon, and that all further proceedings in the said action be suspended until the final determination of the declarative action relating to the nullity of the executive action wherein my clients are plaintiffs and Florencia Victoria, the widow of Morena Lacalle, deceased, is defendant.

Your petitioner further prays that in order to establish his right to appear as counsel herein, the clerk be directed to make a certified copy of the power of attorney which I have heretofore filed, executed by Rafael Enriquez and others, in the action for the redemption of the property in question in which this motion is made, and that I be hereafter considered as attorney in the said action for Rafael Enriquez and other plaintiffs therein.

Manila, March 23rd, 1901.

CHARLES A. DAVIS.

Number ninety.—In Manila, this thirty-first day of January, 1901.—Before me, Calixto Reyes y Cruz, a Notary Public in and for this City, and a resident thereof, personally appeared: Antonio

Enriquez y Villanueva, of age, married, and a resident of this City, with certificate of registration numbered seventy-eight thousand, six hundred and fifty-five, issued by the City Assessor and Collector.—Rafael Enriquez y Villanueva, of age, married, artist, and a resident of this City, with certificate of registration numbered fifty-four thousand, five hundred and eighty-seven, issued last year by the City Assessor and Collector.—Trinidad Enriquez y Villanueva, accompanied by her husband Francisco Javier Lopez Arbizu, a dentist, both of age, and residents of this City, with certificates of registration numbers fifty-four thousand five hundred and eighty-six and fifty-four thousand, five hundred and eighty-five, respectively, issued last year by the City Assessor and Collector.—Nazario Constantino y Ponce Ignacio, of age, widower, lawyer, with certificate of registration issued last year by the City Assessor and Collector, the first three appearing for themselves, and the latter as attorney in fact for José Gascon y Chacon, according to a power of attorney hereinafter referred to, and after assuring me, as in my judgment I believe, that they *they* necessary legal capacity to execute this instrument, nothing to the contrary appearing, the said Antonio, Rafael, and Trinidad, surnamed Enriquez y Villanueva, the latter having obtained the necessary permission from her husband as required by law, and to which I certify, manifest: That they hereby grant and confer a general power of attorney, as ample as may be sufficient and requisite in law, to Mr. Charles A. Davis, of age, and a resident of this City, to represent them in all judicial, governmental, or administrative matters in which they are or may be

concerned, and for this purpose they hereby authorize him
19 to appear before the Supreme Court of Justice of these Islands, the Courts of First Instance, justice courts, departments and offices of the Government and all competent tribunals or authorities, filing complaints, answers, petitions, documents, and such copies thereof as may be necessary, attending the acts of conciliation, actions of voluntary jurisdiction or otherwise, abintestate or testate proceedings, actions for ejectment, executive or civil actions, to file criminal complaints, to institute any other actions of whatsoever nature; to offer and present documentary or oral evidence; to rebut or disprove that which is contrary to their claims; to take depositions; to impeach when necessary, and file all necessary motions and complaints in intervention; to take such oaths as the law requires; to accept service of notices and citations; to petition for warrants of arrest or discharge of prisoners; to secure attachments, dissolve the same, and to sell any property under execution; to appoint experts and referees in cases of disagreement; to hear and appear for resolutions, decrees, orders and final judgments, accepting those which may be favorable and appealing from those which he may consider unfavorable; to prosecute all remedies, such as those relating to nullity, revision, or civil responsibility, or any other ordinary remedy which may be necessary until the final determination; and finally to execute any and all other acts which the grantors of this power would execute, and for this purpose they confer upon him the most ample power, without any limitation or restriction

whatever, promising to ratify and approve whatever their said attorney may do under and by virtue of this power of attorney, which should be construed as including also all such other power as may be requisite and necessary, such as that of substitution and revocation.—Nazario Constantino y Ponce Ignacio states that by a public instrument, numbered eight, executed in the City of Victoria, of the British Colony of Hong Kong on the twenty-eighth of July,

eighteen ninety-nine, before Alejandro Spagnolo, the
20 Spanish Consul at that City, by Jose de Gascon y Chacon, as the legal representative of his minor son, Antonio Jose Gascon y Enriquez, the said Jose de Gascon conferred upon him a general power of attorney, a first copy of which, duly certified to by J. R. Wildman, United States Consul General at Hong Kong, and translated into the Spanish Language by the Interpreter, Manuel Franco, and further certified to by the Attorney Ramon Mañalac, he exhibited to me, the heading of which, and that part thereof relating to the power of attorney and authority which he desires to delegate, is as follows:—Alejandro Spagnolo, the Spanish Consul at Hong Kong, certifies that at pages forty-nine to fifty-two, both inclusive, of the protocol which was commenced on the twenty-first of July, eighteen ninety-seven, there is recorded a power of attorney which is as follows:—No. 8.—Power of Attorney executed by Jose de Gascon y Chacon in favor of Nazario Constantino y Ponce Ignacio.—In the City of Victoria, Capital of the British Colony of Hong Kong, this twenty-eighth day of July, eighteen ninety-nine, before me, the undersigned, graduate of law, Tomas Rodriguez, Vice-Consul of Spain at this Residence, and in the presence of the Consul and the witnesses hereinafter mentioned, personally appeared one Jose de Gascon y Chacon, as the father and legal representative of his minor son, Antonio Jose Gascon y Enriquez, a native of Madrid, of age, a widower, a lawyer by profession, and a transient in this City, with personal cedula number forty-seven thousand eight hundred and forty-nine, issued by the United States Government in Manila, the twenty-first of July, of the present year, who assured me that he was in the full enjoyment of his mental faculties and civil rights, having in my judgment the necessary legal capacity to execute this instrument, and stated that in behalf of his minor son Antonio Jose Gascon y Enriquez he did, and hereby conferred ample and sufficient power upon Nazario Constantino y Ponce

Ignacio, of age, a widower, a resident of the District of Tondo,
21 and a lawyer by profession, to, in their name and stead, and with regard to the property which they have in the Philippine Islands belonging to the estate of the grantor's deceased wife, Concepción Enriquez, execute the following acts:—7. To appear in Court in all acts of conciliation, accompanied by a person of his confidence, filing such complainants and taking such exceptions as may be necessary, abiding by or appealing from any judgment against the grantors, as the said attorney may deem proper. 8. To appear before the Supreme Court or any other superior tribunals in all civil or criminal actions of voluntary jurisdiction, contentions, administrative or Governmental, in which the grantors of this

power may be interested until their final determination, and for this purpose to file such complaints and petitions, and make such defenses in said actions as may be requisite and necessary.—9. This present power of attorney shall supersede all other powers of attorney heretofore executed by the grantor to his deceased wife Concepción Enriquez.—10. The attorney herein appointed is authorized and empowered to substitute such other person as he may deem proper in his stead.—So said and acknowledged the grantor of this power in the presence of the witnesses Emilio Orejas y Martinez, a native of Santander, of age, retired marine accountant, now residing at Hong Kong, and Federico Alvez y Arellano, a native of Madrid, of age, merchant, and a resident of Hong Kong, both of whom are registered in this Consulate under numbers ten and three respectively, and whom I informed of the right which they had to read this instrument themselves, which they did, ratifying the same and signing it in the presence of the witnesses. To all of which, and as to the identity of the grantor and the witnesses hereto, I, the Vice-Consul of Spain, certify. (Signed) Jose de Gascon.—(Signed) Frederico Alvez.—(Signed) Spagnolo, Consul.—Before me—

22 Tomas Rodriguez.—Rubberstamp in blue ink with the Royal Arms as follows: "Spanish Consulate, Hong Kong." The foregoing is a first copy taken from the original of which it is a true copy, and at the request of the grantor of this power I issue these presents this twenty-eighth day of July, eighteen ninety-nine.—Signed. A. Spagnolo, Consul.—The foregoing power is sufficient for the purpose therein mentioned.—Manila, August 13th, 1899.—Ramon Mañalas, Attorney-at-Law. Then follows a rubber stamp of the Spanish Consulate at Hong Kong.—The foregoing is a true copy of that part of its original to which it refers, which was exhibited to me by the grantor of this power, and to which I certify. That under and by virtue of the power thus conferred upon him in the public instrument above transcribed, and which he states has not been revoked or modified, he hereby states and declares: That he substitutes in his place and stead as such attorney in fact, Mr. Charles A. Davis, of age, a practicing attorney and a resident of this City of Manila, authorizing him to exercise all the powers therein granted, promising to ratify and confirm whatever his substitute may do in the premises by virtue of this substitution.—So said and declared in the presence of the witnesses Tomas Diaz é Innocente, and Ciriaco Panuncio y Cavante, both of age and residents of this City. The parties having been informed by the undersigned of their right to read this instrument themselves, or to have the same read to them, I proceeded, at their request to read it, after which they ratified and signed the same in the presence of the witnesses above-mentioned. To all of the statements contained in this public instrument, as well as to the identity, occupations and residences of the parties hereto, I certify.—Antonio Enriquez, Rafael Enriquez, Nazario Constantino, Trinidad Enriquez, F. Javier Lopez Arbízú, Tomas Dias.—Ciriaco Panuncio.—Seal.—Calixto Reyes.—Rubric. The foregoing is a first copy of a power of attorney authorized by me and numbered —, and recorded in my protocol for the

23 present year, to which I refer said copy consisting of four sheets of stamped paper numbered 34331, 34332, 34323 and 34324, corresponding to the present year, in witness whereof I affix my seal of office and sign these presents in Manila on this day. Calixto Reyes,—Three copies three pesos and forty-five cents, numbers sixteen and seventeen section ——. —It is sufficient.— Manila, January 9, 1901.—Charles A. Davis, Attorney-at-Law. The foregoing is a true copy of its original, to which I certify, and for the purpose of attaching the same to its original, I sign these presents in Manila, this fifteenth day of February, 1901.—Ambrosio V. Fuentes.

The foregoing is a true copy of its original appearing at pages ninety-eight to one hundred and four of the record of the proceedings relating to the appointment of a special administrator of the estates of Antonio Enriquez and Ciriaca Villanueva, deceased, issued at the request of Nazario Constantino, as representative of the minor Antonio Gascon, to which I certify, and from which this copy was taken for the purpose of uniting the same to the record of the declarative action relating to the redemption of a certain piece of property, instituted by Rafael Enriquez and others against Francisco Saez Co-Tiongco. Manila, April 19th, 1901. To which I certify. (Signed) Franco. R. Cruz.

24

EXHIBIT "D-6."

To the Court of First Instance of Intramuros:

Charles Davis, counsel for Rafael Enriquez et al., in the action of redemption of the property known as the "Old Theater" on Calle Dasmariñas of the District of Binondo, belonging to the estate of Antonio Enriquez and Ciriaca Villanueva, deceased, and which was sold at public auction to the Chinaman Francisco Saez Go-Tiongco under execution issued in an executive action instituted by Jose Moreno Lacalle against Francisco Enriquez for the recovery of certain attorney fees, appears and states:

That the petitioners herein, having instituted a declarative action to set aside the execution and sale thereunder of the property above mentioned at the same time that the action for redemption was brought, and for the purpose of avoiding a separation of the two actions and two conflicting judgments which might perhaps be rendered in the two cases, asked the Court on the 23rd of March, last, that the proceedings in the said action of redemption be suspended until the final determination of the declarative action.

As will be seen, both cases are now pending before this Court and are being tried separately with the intervention of the actuary, Francisco Cruz, only, the action of redemption being the record against the Chinaman Francisco Saez Co-Tiongco, who bought the property thus sold under execution, and who objected to the redemption of the said property, notwithstanding the fact that he admitted all of the allegations of the complaint, and there being an action now pending with reference to the said property between those whom

I represent and the Chinaman in question, it will be only just, considering the nature of the redemption prayed for, that the property in question should remain in the condition in which it was before

25 it was sold, this in conformity with the legal doctrine that "lite pendants nihil innovetur", and it would appear improper that the said Chinaman should continue to occupy the property in question and receive the benefits thereof, such as rents, this without being guilty of contumacy and bad faith to the prejudice of those whom I represent who are the legitimate owners of such property, since the action for redemption necessarily created a doubt and uncertainty as to the lawfulness of the possession of the property by the said defendant Chinaman, and all the proceedings thereunder were null and void according to paragraph 4 of section 1291 of the Civil Code now in force.

It further appears that the action of redemption of the property known as the "Old Theater" was instituted not only because the same was fraudulently sold to the Chinaman Francisco Saez Co-Tiongco in an executive action in which those whom I represent were neither given an opportunity to be heard nor cited to defend themselves against the claim for the satisfaction of which the said property was sold, but to recover the same for the benefit of the estate of the Enriquez spouses from which it was judicially wrested; and it seems clear that if by virtue of the redemption sought under the provisions of the law Rafael Enriquez et al. have legally and beforehand subrogated themselves in place of the Chinaman in the repurchase of the property in question, it will not do to say that the rights acquired by the said Chinaman to the said property, if not totally extinguished by his opposition to the redemption of the property, could not on the other hand be maintained for the purpose of appropriating to himself the rent of the said property, since the filing of the answer, without being guilty of contumacy and bad faith, since law 8, title 10, partida 3, supported by the judgment of the Supreme Court of Spain of the sixth of February, 1862, no good faith could be presumed in the reception of such rents from the

26 moment that the complaint was served upon the said Chinaman, who filed his answer to the said complaint, and knew that the said property had been maliciously awarded to him long after the filing of the complaint and for which reason I reserve to myself the right to claim in due time such damages as those whom I represent may have incurred.

For the reasons above stated, and considering that the further possession of the property in question and reception of the rent accruing therefrom by the Chinaman Francisco Saez Co-Tiongco until the final determination of the declarative action to set aside the execution and sale of the said property is highly unjust and prejudicial to my clients' interests, and for the purpose of avoiding the misappropriation of the said rents or wasted, I pray the Court that upon consideration of this petition it be ordered, without prejudice to the suspension of the proceedings in the action for redemption referred to in my petition of the twenty-third of March, last, that the rent of the said property known as the "Old Theater",

be paid into Court and ordered deposited in the Monte de Piedad or in some other similar establishment, and notice thereof given forthwith to the tenants or occupants of the said property.

Manila, April 27, 1901.

(Signed)

CHARLES A. DAVIS,

Attorney-at-Law.

27

EXHIBIT "D-7."

To the Court of First Instance of Intramuros:

Simplicio del Rosario, as counsel for Francisco Saez Co-Tiongeo in the action brought against him by the representative of Rafael Enriquez and his brothers, appears and represents:

That on the third instant there was served upon me a copy of the petition filed by the other side requesting that the rent of the property involved in this action be paid into Court, so that within the period of six days I should file my answer thereto.

The aforesaid period of six days not being sufficient for that purpose on account of some other urgent matters which required my immediate attention, and such period being extendable by the Court, I hereby pray for an extension of three days, which petition I make before the expiration of the six days heretofore allowed me.

Manila, May 10, 1901.

SIMPLICIO DEL ROSARIO,

Attorney at Law.

NOTE.—This third day of May, 1901, the foregoing petition was filed in my office and duly reported to the Court, to which I certify.

(Signed)

F. R. CRUZ.

Court of First Instance of Intramuros.

MAY 11, 1901.

ORDER.—Upon reading the foregoing petition, it is ordered that the same be united to the record of the action to which it refers, and it having been filed in due time and in due form, the extension prayed for is hereby granted, without prejudice of serving a copy of the said petition upon the other side.

J. BASA.

Done by the Court to which I the Clerk certify. Before me

FRANCISCO R. CRUZ.

28

NOTIFICATION.—In Quiapo, this thirteenth day of May, One thousand nine hundred and one, the foregoing order was notified by me to Simplicio del Rosario, who having been served with a copy thereof signed with me, to which I certify.

DEL ROSARIO.

F. R. CRUZ.

In Binondo, this thirteenth day of May, One thousand, nine hundred and one, a copy of the foregoing order was served upon Mr. Charles A. Davis, who upon the receipt of the same signed with me, to which I certify.

CHARLES A. DAVIS.
F. R. CRUZ.

29 To the Court of First Instance of Intramuros:

Simplicio del Rosario, as attorney and counsel for Francisco Saez Co-Tiongco, in the action of redemption instituted by Rafael Enriquez and his brothers, appears and represents: That before we had recovered from the surprise which the motion recently presented by the attorney and counsel for the other side to suspend the proceedings in the action of redemption instituted by the same brothers, had caused us, the said counsel filed another motion based upon rank and obsolete theories and therefore devoid of any legal foundation:

Our petition is therefore that such a motion be rejected, the same being unjust and made in bad faith, as we will proceed to show:

Counsel for the other side begins by expressing his surprise that Francisco Saez Co-Tiongco should oppose the redemption of the property, notwithstanding the fact that he had admitted all the allegations of the complaint. Nothing more natural. My dear colleague on the other side knows very well that a complaint may be unjust not only because the allegations upon which it is based are false, but also when the legal provisions relied upon therein are not applicable, or for some other causes, which it is not necessary to set out in detail.

The legal provisions relied upon by counsel for the other side do not have even the remotest application to the facts alleged in his complaint, and this is the reason why, although we admitted the allegations of the complaint, we objected to the granting of the relief sought.

From the *lis pendens* arising from our opposition and from the nature of the redemption itself, counsel for the other side concludes, to suit his own views, and disregarding all principles of logic and law, that the property sought to be redeemed should remain in the same condition in which it was before it was sold and that the purchaser, who in all good faith, paid thousands of dollars for it to the person from whom he lawfully acquired it, can not continue to appropriate and receive for his own benefit the rents accruing therefrom without being guilty of bad faith to the prejudice of those who claim to be the legitimate owners of the property; for according to counsel for the other side doubt and uncertainty naturally arose as to the lawfulness of the possession given to my clients, and that all proceedings had thereunder were unjust (the copy which I have before me says "just") and illegal, according to paragraph four, of section 1291 of the Civil Code.

I call this a most dangerous conclusion for the reason that the contract of purchase and sale of the property in question is one of the means, according to section 1445 of the Civil Code of transferring

the ownership of property which ownership, according to section 348 of the Civil Code, consists of the right to enjoy and dispose of a thing without further limitations than those established by law, and that the owner can not be deprived of his property except by competent authority and in the manner provided in section 349 of the same Code, the civil fruits such as rent from buildings belonging to the owner, as provided in section 355 of the Code. Therefore, if my client became the legitimate owner of the property in question, if he acquired the same from a person who could freely dispose of it, as has been admitted by those who now seek to repurchase the same, since they have not questioned the validity of the sale, there can be nothing more absurd or contrary to reason, to law and to common sense, than for those who now pretend to repurchase the property to call themselves the legitimate owners of the same, particularly when no judgment has as yet been rendered declaring

31 that they are entitled to repurchase the property, and to pretend that the possession arising from the ownership of the property thus lawfully acquired is uncertain and doubtful, and that the reception of the rent is in bad faith. It should be noticed that paragraph 4 of section 1291 of the Civil Code relied upon by counsel for the other side has not even the remotest application to his whimsical and capricious claim that everything done with reference to the property will have no legal effect, because that section refers to the rescission of contracts relating to choses in action entered into by the defendant without the knowledge and approval of the litigants or of the competent authority, and the property in question, as has been seen, was not the subject of any litigation when it was acquired by my client, and no contract for the sale of the same has been entered into after the commencement of this action of redemption.

I don't know from where counsel for the other side gets the strange theory that by virtue of this action of redemption the plaintiffs have legally and beforehand subrogated themselves in the place of my client who acquired the property in question by purchase. The words "beforehand" are not used in the Code nor in any of the laws which are a historical and logical precedent thereof. Nor can such words — deduced from the spirit of the Code. Hence I presume that this idea of such a subrogation must be purely an invention of counsel for the other side, or else an erroneous construction of section 1521 of the Civil Code. That section recognizes the right of the person entitled to the redemption to subrogate himself in place of the purchaser, but not until such right has been declared in a final judgment and made effective can there be any anticipated subrogation, nor any extinction of any of the rights acquired by the purchaser as alleged by Counsel for the other side; nor can

32 there be any anticipated illegality in the reception of the rents. It should be noted that when the right to redeem was discussed, nothing was said about good or bad faith, and it did not even occur to counsel for the other side to mention any such thing, thus recognizing that there was no bad faith at all on the part of my client, and no defect in the method whereby he acquired the

said property, which would invalidate the purchase thereof can be pointed out; for a person who at a public auction buys a piece of property advertised for sale by the judicial authorities, who themselves, and in behalf of the debtor estate, sold and transferred the same, can not be considered as a purchaser or possessor in bad faith simply because he has opposed the action brought by the plaintiffs, unjustly, I may say, to redeem. It should be borne in mind that the mere exercise of this right can not be considered as a conclusive proof of its legality, and that the mere statement of the parties who seek to redeem the property can not be accepted as dogmatic; that is a matter for discussion and for judicial determination. Law 8, title 10, partida 3, as well as the judgment of the sixth of February, 1862, relied upon by counsel for the other side, have no bearing whatever upon the case at bar as a mere reference thereto will disclose.

I will briefly state the

Facts.

1. My client bought the property in question at a judicial sale from one who had the right to sell it, to wit, the Enriquez estate, represented by the executor, Francisco Enriquez, the judge of the Court of First Instance of Binondo having executed the instrument of conveyance.

2. My client has objected to the redemption of the property for the reason that he thinks that the persons who seek the same and who are the same parties in whose name the property was sold, are not entitled to it.

33 3. In the action for redemption, the plaintiffs do not attempt to recover the civil fruits, that is to say the rents.

Law.

1. The complaint does not contain any prayer for the return of the rent, and no question having been raised in regard thereto, the Court can not make any decision upon the matter of the rent accruing from the property, particularly when the recovery of rent does not necessarily follow the right to redeem the property.

2. The Court having no jurisdiction to enter a final judgment for the payment of rent, assuming that the plaintiffs were entitled to repurchase the property in question, the payment of such rent into Court, as requested by counsel for the other side, would be improper and could not be decreed.

Wherefore, the undersigned prays that upon consideration of this petition, a copy of which is hereto attached, the motion of counsel for the other side be denied, with the costs of these proceedings.

The undersigned further prays that, there being no official stamped paper for sale in the local Government office, he be permitted to make this motion on the paper on which it is written, without prejudice to making the necessary payment latter.

Manila, May 14, 1901.

(Signed)

SIMPLICIO DEL ROSARIO,

Attorney-at-Law.

Court of First Instance of Intramuros, this eighteenth day of May, 1901.—Order.—Upon reading the foregoing petition, 34 a copy of which will be served upon counsel for the other side, when notice of this order is served upon such adverse party, it is ordered that the said petition be attached to the record to which it refers, as to the principal part thereof, and let the record be brought up for decision of this motion and of the previous motion upon notice to the parties, and as to the supplementary prayer of the said petition, the petitioner is hereby required to pay the value of the official paper which he failed to use for such petition. Done by the Court, to which I certify.—J. Basa.—Before me.—Francisco R. Cruz.

In Binondo, this twentieth of May, 1901, a copy of the above order was served upon Mr. Charles A. Davis, who upon receipt of the same, signed with me, to which I certify.—Charles A. Davis.—F. R. Cruz.

In Quiapo, this twentieth of May, 1901, a copy of the above order was served upon Simplicio del Rosario, who upon receipt of the same, signed with me, to which I certify.—S. del Rosario.—F. R. Cruz.

35

EXHIBIT "D-8."

To the Court of First Instance of Intramuros:

Mr. Charles A. Davis, as attorney and counsel for Rafael Enriquez and co-heirs, among the latter the minor Antonio Gascon y Enriquez, in the action for the redemption of the property known as the "Old Theater" instituted by them against the Chinaman Francisco Saez Co-Tiongeo, appears and represents:

That it is now some two months since a motion was filed in this action to have the rent accruing from the property in question deposited in Court and that notwithstanding the fact that counsel for defendant was duly served with a copy thereof, no decision has to our knowledge as yet been rendered by this Court.

This delay, as the Court will readily understand, constitutes not only a violation of the procedural law (sections 734 and 741 of the Code of Civil Procedure, but is highly prejudicial to the interests of the Enriquez Estates, to which the property in question belongs. And the Court well knows, and can not be ignorant of the fact, that the motion in question was for the purpose of securing an order directing that the rent accruing from the "Old Theater" be paid into Court.

1. The property in question was sold at public auction under an execution in an executive action instituted without the knowledge of Rafael Enriquez and the other persons whom I represent, there being at present pending in this Court a separate action to have the said sale annulled and set aside, the plaintiff herein having protested and opposed in due time the sale in question and asked that the same be suspended a few hours before it actually took place, as appears from the record in the executive action.

36 2. The property in question was sold and the proceeds of the sale were paid into Court, said property having finally been conveyed to the defendant Chinaman, Francisco Co-Tiongco, several days after the plaintiffs in this case had paid into Court a sum equal to the amount for which it was sold, with the knowledge of the said Chinaman.

3. The proceedings in the action of redemption should have been suspended as requested by us until the action to set aside the sale of the property in question had been decided, and the two actions disposed of at the same time. It is evident that on account of such suspension the defendant Chinaman would continue to collect for an indefinite time the rent accruing from the property for the payment of which no security had been required from the said Chinaman, to the prejudice of the plaintiffs in this case, and the Court, as everybody knows had on its own motion disposed of the proceeds of the sale paid into Court subsequent to the filing of the complaint of the plaintiffs herein in the action for redemption.

If it thus clearly appears from the two actions which are now pending in this Court that the foregoing allegations are true, and which the defendant Chinaman does not deny, and could not have denied in his answer to the complaint, would it be improper for my clients to ask that the rent accruing from the property known as the "Old Theater" sought to be redeemed, be paid into Court? Can it be contended, in view of all that has been said, that the Chinaman, Francisco Co-Tiongco, is a possessor in good faith, and as such entitled to continue to receive the rent in question, simply because the Court has arbitrarily protected him in the possession of the said property? If this is improper and repugnant, it would not be less so should the Chinaman be allowed to take advantage of such unjust

37 possession without having given any security or bond to guarantee the payment of the rent before the final determination of the action to set aside the sale of, and to redeem the property in question.

Hence the necessity that the rent accruing from the "Old Theater" sought to be redeemed be provisionally paid into Court, and we have shown the reason why the Chinaman Francisco Saez Co-Tiongco could not, and can not, continue to receive and appropriate to himself the said rent in such bad faith, since he was served with plaintiff's complaint and opposed the same without any reason therefor, and for all this we rely upon the judgment of the Supreme Court of Spain cited in our motion of the 27th of April, last, and particularly in view of the fact that the action to set aside the judicial sale was pending, unless the Court should see fit to find otherwise to serve some particular end, even though such action would be prejudicial to the interests of my clients.

For the reasons above stated, and in view of the time which has elapsed, the undersigned prays the Court to decide the motion asking that the rent accruing from the old theater be paid into Court in conformity with our petition of the 27th of April, last.

Manila, July —, 1901.

(Signed)

CHARLES A. DAVIS.

A. A. Montagne and F. E. Dominguez, as attorneys and counsel for Rafael Enriquez and co-heirs, as shown by the certified copy of the power of attorney hereto attached, appear and represent:

That among the various actions connected with the estate of Antonio Enriquez and Ciriaca Villanueva, deceased, now pending in this Court, one of them relates to the redemption of the property known as the "old Theater", belonging to the said estate, in which the Chinaman Francisco Saez Co-Tiongco is defendant, he having purchased the said property at an execution sale.

In the action in question there was instituted more than three months ago the proceedings relating to the provisional deposit of the rent accruing from the said property, which said proceedings notwithstanding the lapse of time since then, and the further fact that the previous judge of this Court, the Honorable Basa, was requested to render a decision thereupon, are still undecided, the Court having heretofore refused to take any action upon the question thus raised, notwithstanding the reasons therefor alleged in our previous petition.

The indisputable nullity of the sale of the property in question, the action instituted in due time for the purpose of redeeming said property long before the execution sale was approved and the property conveyed to the defendant Chinaman, the possession held by the Chinaman, which we consider unjustified, from the very moment that the action was brought against him by those whom I represent, and finally, the inability on the part of this defendant to give any security for such damages as my client may incur by reason of such arbitrary and unjust possession, and the receipt of the rent by him,

39 are all good reasons why the said Chinaman should be required to pay the said rent into Court as prayed for in our previous motion.

Wherefore, the undersigned pray that this motion be set for hearing, and decided upon the record and proceedings in the action relating to the property known as the "Old Theater", and that it be directed that the said rent be provisionally deposited in Court in accordance with the petition presented by plaintiffs' former attorney, and that the undersigned be entered as attorneys for plaintiffs herein.

Manila, August 3, 1901.

(Signed)

A. A. MONTAGNE.
F. E. DOMINGUEZ.

Judgment.

In the City of Manila, this twentieth day of September, 1901, the Honorable W. A. Kincaid, Judge of the Court of First Instance of Manila, upon examination of the record and proceedings in the

case instituted by the attorneys and counsel for Rafael Enriquez against the Chinaman Francisco Saez Co-Tiongco for the redemption of the property sold under execution, and

It appearing that the property known as the "Old Theater" of Binondo having been sold under an execution issued by the Court of First Instance of the District of Binondo, to one Francisco Saez Co-Tiongco for the sum of thirty-three thousand nine hundred and fifty pesos to satisfy a judgment against the estate of Antonio Enriquez, represented by the executor thereof, Francisco Enriquez, one of the testamentary heirs of the said deceased, his brothers, who were also heirs under the will, and among them, Rafael Enriquez, brought this action for the purpose of redeeming or repurchasing the said property under section 1522 of the Civil Code,

And it appearing that the purchaser Francisco Saez Co-Tiongco, in his answer to the plaintiff's complaint, opposed the repurchase on the ground that the property had been sold in its entirety and for and on behalf of the estate, that is to say of the heirs interested therein, for which reason the action of redemption which the law only gives to joint owners in case the shares of other joint owners or of some of them to be sold by them to a stranger, does not lie, and it appearing that at the hearing of this motion counsel for defendant filed two documents executed prior thereto, one of them representing an agreement between the Chinaman, Mariano Fernando Yu Chingco

and Rafael Enriquez, executed before Calixto Reyes y Cruz,
 41 one of the notaries public of this City, whereby the said Rafael Enriquez obligated himself to sell to the said Chinaman the property known as the "Old Theater" for the sum of forty-five thousand and four hundred pesos in case he should succeed in redeeming the same, and the other consisting of a notarial act wherein it is set forth among other things that Rafael Enriquez, one of the plaintiffs in this action, Francisco Enriquez, the testamentary executor, and Antonio Enriquez, one of those interested in the estate, had agreed to sell the property in question for the purpose of paying among other things the fees due to the attorney, Mr. Lacalle, the judgment creditor.

And it appearing that the present case has been proceeded with in strict conformity with the law, and

Considering that the entire property was sold in behalf of the estate of Antonio Enriquez or, which is the same, in behalf of the deceased's heirs, the action of redemption does not lie, since such an action is only accorded to the joint owner, when one or more of his co-owners sells his or their share therein, and this is not the case in the present instance. Sections 1521 and 1522.

Considering further that the action brought by Rafael Enriquez and his co-heirs is absolutely unfounded, their apparent object being to sell the property for a larger amount in case they should prevail, the costs of this action should, and they are hereby taxed against him.

In view of the provisions of the sections above-cited, it is hereby adjudged and decreed that the plaintiffs are not entitled to redeem the property known as the "Old Theater", and the Court therefore

acquits the defendant, Francisco Saez Co-Tiongco, of plaintiff's complaint, with the costs of this action against the plaintiffs, Rafael Enriquez and his brothers, and it is so ordered.

42 (Signed)

W. A. KINCAID.

SIMPLICIO DEL ROSARIO.

J. McMICKING.

Ex. "D" 14.

In Manila, this twenty-third day of September, 1901, the foregoing judgment was read, and a copy thereof delivered to attorney Montagne, who thereupon accepted service of the same, to which I certify.

(Signed)

A. A. MONTAGNE.

J. McMICKING."

B.

43

EXHIBIT D-11.

Number Two Hundred and Eleven.

In Manila, this ninth day of March, eighteen ninety-eight, before me Enrique Barrera y Caldes, Doctor of Civil and Canonical Law, and a notary public of the Il-lustrious Association of Notaries of the City of Manila, personally appeared Jose Moreno Lacalle, an attorney-at-Law, of age, married, and a resident of this City, with registration tax certificate of the fourth class, number one thousand and nine, issued by the Treasurer of this Province, and having in my judgment the necessary legal capacity to execute this instrument, nothing to the contrary to me appearing, freely and of his own will stated: That having resigned his office as accountant and partitioner of the estate of the deceased Antonio Enriquez y Sequera, he called upon the undersigned notary to take charge of all the documents and papers belonging to the said estate which he now has in his possession, and to hold the same at the disposal of the executor and other persons interested in the said estate, with the exception of the minutes of the resolution adopted by the interested parties as to the partition of the estate of the deceased Enriquez, for the reason that the said minutes, on account of their nature, should be reported in the protocol, and for this purpose he also requested the undersigned notary to record it therein.

The deponent thereupon delivered to the undersigned a package containing the following documents:

A copy of the will of the deceased Antonio Enriquez y Sequera,

A copy of the codicil thereto,

A copy of the deed of settlement executed by the heirs to the said Antonio Enriquez, deceased, on the twenty-second of April, 1891, before the Notary Public Abraham Garcia y Garcia.

44 A rough draft of the said instrument.

Accounts submitted by the executor, Francisco Enriquez, consisting of seven documents, sewn together.

A document containing the objections made by Mr. Gascon to said accounts.

Memorandum of resolutions adopted by those in charge of the partition on the 19th of December, 1895.

First copy of the deed evidencing the agreement of partition of the estate, executed by Francisco, Rafael and Antonio surnamed Enriquez y Villanueva, on the 25th of August, 1896, before the notary public José Engracio Monroy y Torres.

First copy of the deed of rectification executed by the said Francisco, Rafael and Antonio, surnamed Enriquez y Villanueva, on the eleventh of September, 1896, before the notary Mr. Monroy.

Three certificates issued by Juan Caballero with reference to the measurements and valuation of houses No. 3 Calle Audiencia, No. 14 Calle Escolta, and No. 43 Calle Palacio.

Objections to the accounts rendered by the Executor made by Rafael Enriquez and Antonio Enriquez, as parties interested therein.

Inventory of the property belonging to the estate of Antonio Enriquez y Sequera, deceased, prepared by the executor, Francisco Enriquez, and accounts of the sale of certain furniture, list of the furniture in the house occupied by the Enriquez family in Spain, duly certified by Rafael Enriquez and certain accounts under the caption of "Power of Attorney of Antonio Enriquez".

A bound memorandum book of pensions paid to the heirs.

Mr. Moreno Lacalle had also delivered to me a memorandum book of the minutes and resolutions adopted by the heirs of Antonio Enriquez y Sequera, and Ciriaca Villanueva, deceased, relating to the partition of the latter's estates, said minutes being written out on common paper. The book, which consists of seventeen
45 pages is recorded, at Mr. Lacalle's request, in the protocol immediately after this instrument and there will be attached to it four half sheets of Government paper to the value of two dollars and twenty-five cents.

And deponent having nothing further to say, signed these presents after reading the same, to which I certify.—Jose Moreno Lacalle.—Dr. Enrique Barrera y Caldes.

The documents referred to as having been registered in the protocol are the following:

In Manila this 14th day of November, 1896. At a meeting held by Messrs. Francisco, Rafael and Antonio, surnamed Enriquez y Villanueva, at the law office of José Moreno Lacalle, the latter, attorney Lacalle, stated that it having become necessary for him to absent himself from this City and the time stipulated in the agreement executed by the Enriquez brothers on the 25th of August, last, before the Notary E. Monroy, within which the accounts of the estates in question should be examined, and any objection thereto made by the parties duly settled, being about to expire, he suggested that such time be extended, whereupon the Enriquez brothers unanimously agreed to extend for a further period of two months the three months' time provided for in paragraph (a) of the second basis, clause four of the above-mentioned deed, in order to enable Don Rafael and Don Antonio Enriquez to examine the said accounts,

such extension to commence not on the day immediately after the expiration of the period originally allowed therefore, but on the day of Mr. Lacalle's return to Manila.

In witness whereof the parties hereto signed these presents in duplicate.—Francisco Enriquez.—Rafael Enriquez.—Antonio Enriquez.—José Moreno Lacalle.

In Manila, this 22nd day of December, 1896, at a meeting held by Messrs. Francisco, Rafael and Antonio, surnamed Enriquez, held in the law office of Attorney José Moreno Lacalle 46 at the latter's request, the said Moreno Lacalle stated that the object of the meeting was to inform those present that on account of his wife's ill-health he was compelled to return to Hong Kong at once and was therefore unable to attend the deliberations incident to the examination of the executors's accounts of his administration of the estate of Don Antonio Enriquez y Sequera.

Whereupon Messrs. Francisco, Rafael and Antonio Enriquez unanimously agreed that the period of two months allowed at a previous meeting to Don Rafael and Don Antonio for the examination of the said accounts and settlement of any objections thereto, should not be counted as heretofore stipulated, from the time of Mr. Lacalle's return from Hong Kong on the 19th instant, but from the day following his return to Manila from the trip which he intended to take in a few days.

In witness whereof, the parties hereto signed these presents in duplicate.—Francisco Enriquez.—Rafael Enriquez.—Antonio Enriquez.—José Moreno Lacalle.

In view of the fact that Mr. Lacalle's return to Manila on the first instant was not definite and that he must return at once to Hong Kong on account of his family, the undersigned Francisco, Rafael and Antonio, surnamed Enriquez, agreed that the extension of the time for the examination of the accounts of their parent's estates, referred to in the instrument of the 24th of August last, and in the private documents executed by them on the 14th of November and on the 27th of December of the said year, shall be reckoned from Mr. Lacalle's return from the trip which he is to undertake shortly.

In witness whereof, the parties hereto have signed these presents in Manila this 13th day of April, 1897.—F. Enriquez.—J. Moreno Lacalle.—Antonio Enriquez.—Rafael Enriquez.

47 At a meeting held by Don Francisco, Don Rafael and Don Antonio Enriquez y Villanueva in the office of the undersigned, No. 6 Calle General Solano, and at his request, this third day of August, 1897, at four o'clock P. M., for the purpose of discussing the objections presented by the latter two gentlemen to the accounts rendered by the executor of the estate of Antonio Enriquez y Sequera, deceased, such of the objections as related to the debit items were read, whereupon Don Francisco stated that in order to verify the correctness of the same he had to examine the antecedents referring to each particular item.—After deliberation the parties unanimously agreed to gather privately for the purpose of examin-

ing the items objected to and making the necessary rectifications and upon the completion of such examination, they will proceed to examine the remaining items objected to, upon notice to the undersigned who will call a new meeting to determine the matter in question.

Whereupon the present meeting was adjourned, the parties signing with me.—Francisco Enriquez.—Rafael Enriquez.—Antonio Enriquez.—Jose Moreno Lacalle.

In Manila, this 16th day of August, 1896, at a meeting held by Don Francisco, Don Rafael and Don Antonio Enriquez y Villanueva, in the office of Don José Moreno Lacalle, the latter being present, stated that pursuant to the resolution adopted at the meeting held on the third instant, they proceeded to verify, from the data at hand, the objections made by Don Rafael and Don Antonio to the debit items of the accounts rendered by the executor of the estate of Antonio Enriquez y Sequera, deceased; and as a result of the examination made and of the explanations had between the person rendering the accounts and the said gentlemen, they agreed as following with regard to the said objections:

That all of the said items are correct with the exception of those hereinafter noted.

48 First: The rent for the months of July to December, 1884, of house No. 14 Calle Escolta shall be at the rate of two hundred dollars per month and not one hundred as shown in the accounts rendered by the executor until the latter exhibits the letter evidencing the contract of lease of the said house, which the said executor believes can be found amongst his papers.

Second: The rent of the house leased to Messrs. Baer Shum for the months mentioned in the preceding paragraph, shall be charged at the rate of one hundred and seventy pesos.

Third: The items representing the rent of the same house leased to the said Baer Shum, for the year 1885 shall be four hundred dollars in excess of the amount allowed by the executor in his accounts for that year.

Fourth: As rent for part of the ground floor of the house No. 14 Escolta, for the same year, the sum of two hundred and ten dollars.

Fifth: There shall be charged as rent for another part of the same premises, for the year 1886, the sum of eight hundred and forty dollars.

Sixth: The sum of one hundred and seventy dollars instead of one hundred dollars as shown in the Executor's accounts, shall be charged as rent of house No. 12 Palacio street for the month of October, 1888.

Seventh: The rent of house No. 6, Calle David for the year 1896 shall be fixed at four hundred and seventy pesos for the whole of the first three months of that year, in excess of the amount allowed by the executor.

The parties have further agreed that the executor shall be given credit for the sum of one thousand and eighty pesos, representing all overcharges against himself shown in the accounts as rendered,

in the rent for part of the ground floor of house No. 14 Calle Escolta, occupied by Tarachar & Co., for the months of July to December, 1884, and January to December, 1885, which said sum of one thousand and eighty dollars shall be deducted from the total amount for which the executor is accountable.

The parties also declare that, with the foregoing amendments, they accept the debit items of the executor's accounts as rendered, error or omissions excepted.

In testimony whereof they have executed this instrument in duplicate, one copy for the executor and the other to be united to the partition proceedings, and signed the same in the presence of Mr. Moreno Lacalle.—Rafael Enriquez.—Antonio Enriquez.—Francisco Enriquez.—José Moreno Lacalle.

In Manila, this 23rd day of October, 1897, at a meeting held in the office of the Attorney Don José Moreno Lacalle, Messrs. Francisco Enriquez y Villanueva, Rafael Enriquez y Villanueva and Antonio Enriquez y Villanueva unanimously adopted the following resolution:

In case of the sale of the property belonging to the estate of Antonio Enriquez y Sequera, the deceased father of the aforesaid Francisco, Rafael and Antonio Enriquez y Villanueva, situated on calle Sasmariñas of the District of Tondo of this City, known as the "Old Theater," the proceeds of such sale, after deducting therefrom the amount of the lien existing upon it in favor of the "Junta Administradora de Obras Pias" shall be expended as follows and not otherwise: (1) to pay such sum as may be stipulated in case a compromise or agreement is reached with the heirs of Juan Antonio Gomez; (2) to pay Attorney José Moreno Lacalle for his services in connection with the liquidation and settlement of the said estate, and (3) to defray any absolutely necessary expenses incurred for or by the estate with the unanimous consent of Don Francisco, Don Rafael and Don Antonio Enriquez and Attorney Lacalle's advise first obtained.

50 The entire proceeds of the sale shall be deposited in account current with one of the local banks of this City and checks drawn against such fund shall be signed by two of the three interested parties.

The check book shall be united to the other papers relating to the estate now on file in the office of the attorney for same, for the use of the parties entitled thereto.

In witness whereof the parties hereto have signed these presents in the presence of Mr. Moreno Lacalle.—Francisco Enriquez.—Rafael Enriquez.—Antonio Enriquez.—José Moreno Lacalle.

In Manila, this third day of November, 1897, at a meeting held in the office of Attorney Moreno Lacalle by Don Francisco Don Rafael and Don Antonio Enriquez y Villanueva, for the purpose of finally settling the accounts of the administration of the property of Antonio Enriquez, deceased, during the year 1883 and of the estates of the said Antonio Enriquez and his wife, Ciriaca Villan-

ueva, respectively, and the preparation of the inventory of the property of both estates. After a thorough discussion of the matters considered at previous meetings it was agreed as follows:

As to the said accounts:

(1) With regard to the items for repairs to the property of the estate and objections thereto, upon the basis set out in the agreement of the 19th of December, 1895, between Messrs. Ycaza and Moreno Lacalle that such items were to be considered as withdrawn and the value of the repairs already made to the said property appraised and determined by experts, considering that such method of appraisal is rather expensive and difficult, it was agreed that the executor be credited in his accounts with the sum of 18,380 dollars and 70 cents for such repairs, all objections in connection therewith being hereby withdrawn and the matter thus finally and forever settled.

51 (2) As to the items of disbursements in the said accounts for other purposes than repairs, it was agreed to consider all objections thereto settled by fixing the total amount of such disbursements in the manner to be provided in the proposed deed of approval of these accounts formation of the inventory which the parties have approved on this same date, and the draft of such proposed deed shall be at once put in the hands of a Notary Public for its execution in due form, thus definitely and finally approving the accounts in question.

The Inventory.

(3) The inventory is hereby approved in the form in which it appears in the aforesaid proposed deed of settlement.

(4) There having been included in the general accounts of the executor the amounts which the participants in the estates have been paid from time to time as an advance upon their legitimate share, which said amounts should appear in the individual account of each of the said participants, it was agreed to exclude the amounts thus advanced from the accounts rendered by the executor, and that a separate account for each of the participants be kept, showing the sums paid as aforesaid, and that the balance shown on each of these separate accounts be entered upon the inventory to the credit of the estate.

(5) Messrs. Rafael and Antonio Enriquez, having stated that they understood that the premises at number nine Calle David, three *posiciones* on La Baraca, in the District of Tondo of this City and a house on Calle Baluarte or Fundición, belonged to the estate of their deceased father, requested that all of the said property be included in the inventory, to which Francisco Enriquez replied that the house on Calle David, number nine, was sold by his deceased father to his, Don Francisco's wife, for the sum — eight
52 thousand dollars, according to a public instrument executed before the Notary Public, Don Miguel Torres, on the 27th of March, 1883, a copy of which instrument he submits for examination by the objectors; that the house on Calle Fundición was also sold by his father on a date which he is unable to fix, and that the *posiciones* on La Baraca or Riverita were sold by the said Fran-

cisco Enriquez, as attorney in fact for his father to one Victoriano de los Reyes on the 12th of March, 1884, for the sum of two thousand five hundred dollars, the said amount, plus the sum of five hundred having been remitted by draft to his father through Don Manuel Enriquez, as shown by a letter from the latter, which said letter together with the deed of sale of the said property he submits for the examination of the objectors.

Whereupon the parties agreed to withdraw the request that the house on Calle David, numbered nine, be included in the inventory; that the *posesiones* on La Baraca be not included in the inventory, since the sale thereof has been satisfactorily proved; but that the proceeds of the sale of the said properties be considered as an unsettled charge against the accounts of the executor until the latter presents proof of the remittance of the amount of the purchase price; and as to the house on Calle Fundición, it was agreed to secure some further data before taking definite action thereupon.

(6) It was further agreed that the item of the account of eighteen ninety-three relating to the draft of two thousand dollars in favor of Don Manuel Enriquez be approved upon Don Francisco's promise to at once produce vouchers.

By virtue of the foregoing agreement, the accounts in question are considered settled and the inventory of the estates terminated. In witness whereof, the parties hereto sign these presents in duplicate.

(Signed) Rafael Enriquez.—Francisco Enriquez.—Antonio
53 Enriquez.—José Moreno Lacalle.

At a meeting held by Don Francisco, Don Rafael and Don Antonio Enriquez in the office of the Attorney Moreno Lacalle this 13th day of November, 1897, the following resolutions were adopted:

1. The item of the account of 1883, relating to the draft of two thousand dollars in favor of Manuel Enriquez is definitely proved. Don Francisco, who rendered the said account, having shown that the said amount was drawn to meet expenses of Don Antonio Enriquez and his family.

2. In the account of 1884, Don Francisco Enriquez shall be given credit for the sum of eight thousand five hundred dollars remitted by him to Don Manuel Enriquez, instead of for the sum of six thousand five hundred and twenty-five dollars and fifty cents appearing in said account, Don Francisco Enriquez having shown that the said sum was so remitted to meet expenses of Don Antonio Enriquez and his family; but there shall be deducted from the said amount the sum of one thousand, seven hundred and seventy-five dollars, as an advance upon the legitimate share of the heirs Doña Rosario, Doña Carmen, Doña Trinidad, Gertrudis, Doña Concepción and Don Cayetano, which will be charged *pro rata* to their individual accounts, since this money was spent after Don Antonio's death.

3. Don Francisco Enriquez shall be charged in his account as executor with the sum of fifteen hundred dollars, the approximate amount of the dividends corresponding to the six shares of the Hong Kong & Shanghai Banking Corporation belonging to the estate, but

this amount may be rectified by the interested parties when more definite data is received.

54 4. The compromise proposed by Carmen Escalante, widow of Gomez, in behalf of her children, Elaica, Cecilia, and Jose Gomez y Escalante, as heirs of their deceased father, Don Antonio Gomez, in the executive or summary action instituted by the estate against the said Antonio Gomez, deceased, be accepted upon the following basis:

The property known as number ten Calle San Sebastian, District of Quiapo, and the property on Calle Carcer of the same District, shall be conveyed by the heirs of the said Antonio Gomez, deceased, to the heirs of Antonio Enriquez, deceased, in payment of the principal and interest, and costs, claimed in the said summary action, and the property on Calle Concepción of the same District belonging to the said Antonio Gomez, deceased, shall be released from the lien thereon, and the attachment thereon dissolved.

5. That the administrator of the funds of the Sagrada Mitra be asked to accept in payment of all that the estate owes the said Sagrada Mitra for the mortgages existing upon the property of the said estate, and interest due thereon, the houses numbered twelve and forty-three Calle Palacio, District of Intramuros, of this City, and a recognition of an indebtedness to the said Sagrada Mitra in the sum of thirty-five thousand dollars, at six per cent per annum, secured by a mortgage upon the premises known as number 14 Escolta, District of Binondo, with the understanding that a part of the said premises will be delivered to the administrator of the said Sagrada Mitra under a contract of anti-crisis, so that with the rent thereof the interest may be paid and a certain amount be applied on the principal.

In witness whereof, the parties signed these presents.

Addition: As to the claims in favor of the estate and against Maria de Dat, Honorato Rocamora, Maria Hidalgo, Juan 55 Briones, Baldomero Rocamora, Maximo and Bernabe Menor, Perfecto Hidalgo, Alejandro Alcantara, Manuel Pangani-san, and Juan Mitra, Francisco Enriquez stated that the actions for the recovery of these claims were instituted by the deceased, Don Antonio Enriquez and that he, Francisco Enriquez, as executor, had continued the same, but without result as to the claim against Timoteo Hidalgo, having abandoned the other claims because he had become satisfied that they could not be recovered upon. As to the payments made to the Marchioness Fuentepiedera and Countess of Humanes, Don Francisco Enriquez stated that these represented obligations contracted by Don Antonio Enriquez, deceased, as administrator of the estate of Francisco de Paula Enriquez and as such the person who received and was bound to deliver to the said ladies their shares as heirs of the said Francisco de Paula Enriquez.—(Signed) Francisco Enriquez.—Rafael Enriquez.—Antonio Enriquez.—Jose Moreno Lacalle.

In Manila, this third day of December, 1897, at a meeting held by Don Francisco, Don Rafael and Don Antonio Enriquez y Villanueva, in the office of the Attorney, Moreno Lacalle, the said

Francisco Enriquez submitted the accounts of the heirs of Antonio Enriquez and Ciriaca Villanueva showing the advances made to each of them upon their respective shares, and the account of the money collected by him, the said Francisco Enriquez, as executor from July 1st, 1896, to October 31st, 1897. Thereupon the account of the heir, Antonio Enriquez y Villanueva, showing a debit balance of nine thousand and ninety-one-dollars, was submitted and examined, and the said Antonio Enriquez y Villanueva having expressed his conformity therewith, it was decided to approve the said account.

56 As to the other accounts referred to, it was agreed that they be submitted to Don Rafael and Don Antonio Enriquez for examination, such examination to be completed on or before the eleventh day of this month, and for such objections as they may see fit to present thereto in the manner provided in the deed of the 25th of August, 1896.

The executor also presented an account of drafts drawn by the testator during the years 1870 to 1883 for the support of Don Rafael, one of the heirs, stating that in his opinion the amounts so drawn should be deducted from the said heir's share, since the latter could have earned his own living during that time and his father's obligation to support him had therefore ceased.

Rafael Enriquez stated that he objected to such deduction for the reason that the amounts received by him were for his support, education and medical treatment, his father having sent him to Spain on account of ill-health; that during the period in question and as soon as he made himself proficient as an artist, he sent some of his paintings to his father, who sold some of them and kept the rest.

Failing to arrive at an understanding, the parties agreed to submit the question to Mr. Moreno Lacalle for decision before final action.

In testimony whereof they signed these presents.—Francisco Enriquez.—Rafael Enriquez.—Antonio Enriquez.—Jose Moreno Lacalle.

The foregoing is a true and correct copy of the original registered under No. 211 in the protocol of public instruments for the year 1898 on file in my office. And at the request of Francisco Enriquez, I issue this certificate, unnumbered on account of its
57 nature as a notarial act, consisting of ten sheets of stamped paper for the present year, and in witness thereof, I have hereunto set my hand and affixed my seal of office in Manila, this 12th day of September, 1901, after noting the issuance of this certified copy on the original thereof.—Enrique Barrera y Caldes.

58

EXHIBIT "D-12."

Number Seven Hundred and Fifteen.

In Manila, this 22nd day of September, 1900, before me, Don Calixto Reyex y Cruz, a Notary Public in and for this City, and residing therein, personally appeared Don Rafael Enriquez y Villanueva, 50 years of age, married, freeholder, and residing in the district of Quiapo of this City, with registration tax certificate issued by the City Assessor and Collector for the present year, as party of the first party, and the Christian Chinaman Mariano Fernando Yu Chingo, 56 years of age, a merchant, residing in the District of Binondo of this City, with registration tax certificate No. 16093 issued this year by the City Assessor and Collector, as party of the second part, and after assuring the undersigned that they had, as in his judgment they have, the necessary legal capacity to execute this instrument, nothing to the contrary appearing to me, the said Rafael Enriquez y Villanueva solemnly declared

1. That in the Court of First Instance of Binondo a summary action for the collection of money was instituted by the counsel for the widow and heir of José Moreno Lacalle against the estate of Antonio Enriquez, deceased, represented by the executor, Francisco Enriquez.

2. That as a result of the said action the premises known as "The Old Theater", corner of Poblete and Dasmarinas streets in the judicial district of Binondo of this City, and within the northern section of the Registry of Property, and more particularly described in the pleadings of the said action, was attached and levied upon, the said property belonging to the estate above-mentioned.

59 3. That the said action having been duly tried and decided, the property in question was advertised for sale at public auction and sold to the Chinaman Francisco Saez-Go-Tiongco, as the highest bidder in the sum of 33,915 dollars.

4. That the said Rafael Enriquez desiring to exercise the right of repurchase of the said property as one of the heirs of the deceased, Antonio Enriquez, he having already taken some steps to this end in the said Court of First Instance of Binondo, and deposited therein the sum of 33,915 dollars, for which the property was sold.

5. That the said 33,915 dollars, plus the sum of 2,050 dollars he borrowed for the purpose above indicated, from the Christian Chinaman Mariano Fernando Yu Chingo, and the receipt of which, in legal currency, to his entire satisfaction, the, the said Rafael Enriquez, hereby acknowledges, and payment of the said sums not having been made in the presence of the undersigned notary, Mr. Enriquez was informed that he having acknowledged the receipt of the 36,915 dollars, he is bound by such admission and has thereby waived any special rights which he would otherwise have on account of the money not having been paid in my presence.

Mr. Enriquez, as party of the first part, has accordingly agreed with the party of the second part as follows:

(a) Should Mr. Enriquez succeed in securing from the Court of First Instance a judgment entitling him to repurchase the property described in the second paragraph of this instrument, he hereby obligates himself to sell and transfer the same for the agreed price of 45,000 pesos to the Christian Chinaman Mariano Fernando, the formal deed of conveyance to be executed within five days after Mr. Enriquez has subrogated himself in place of the purchaser at the execution sale.

(b) Mr. Enriquez also obligates himself not to alienate or encumber the property in question, unless he indemnifies Yu Chingo for the damages which the latter may incur.

60 (c) Should Mr. Enriquez fail to secure the repurchase of the property in question, he shall return the said sum of 36,165 dollars to Mr. Yu Chuico whom he will notify in advance of his intended withdrawal of the deposit made by him into court.

(d) Both parties agree that all fees and charges for the preparation and registration of all necessary documents, with the exception of the registration of this instrument, shall be borne by Mr. Enriquez.

And to the faithful performance of this contract, the parties truly bind themselves in the presence of the witnesses Tomas Dias and Ciriaco Panuncio, of age, and residents of this City. The parties having been informed of their right to read this instrument or have it read, the undersigned read the same at their request and upon ratification of its contents they signed their names thereto in the presence of the said witnesses, to all of which as well as to the indentify, occupation and residence of the contracting parties, I certify.—Rafael Enriquez, Mariano F. Yu Chingco, Tomas Dias, Ciriaco Panuncio, Calixto Reyes. (Seal of Notary.)

I certify that the foregoing are true copies of their originals on file in the case of Rafael Enriquez, plaintiff, versus Francisco Saez Co-Tiongco, defendant, the same being a declarative action now pending in this Court of First Instance of Manila, to which I certify. And at the request of Robert Moreno I issue these presents in Manila, this 27th day of August, 1907.

(Signed)

[COURT SEAL.]

J. McMICKING,

*Clerk of the Court of First Instance
of the City of Manila.*

Two Revenue Stamps of 10 cents each.

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EXHIBIT A.

Don Calixto Villafranca, acting Parish Priest of the District of Quiapo of the City of Manila,

Certifies: That on page 244, book 5, of the Marriage Register, the following entry appears:

"This ninth day of June, eighteen sixty-five, I the undersigned Parish Priest of this town of Quiapo, certify that, the bans provided by the Council of Trent having been dispensed with, and there being

to my knowledge no objection thereto, I joined in matrimony on the eighteenth of September *in facie Ecclesie* in accordance with the rites of our holy church in this parish, Don Antonio Enriquez y Sequera and Doña Ciriaca de Villanueva y Sierra, the first being the son of Francisco Enriquez and Gertrudis Sequera, and the latter the daughter of Juan de Villanueva and Maria del Carmen de Sierra, to which I certify in the presence of the witnesses, the Rev. Eusebio de Leon, Fr. Juan Martinez of the Order of San Juan de Dios, Doña Lucia de Villanueva and Don Mariano Infante.—José M. Gavara.”

The foregoing is a true and correct copy of its original, to which I certify. Parish House of Quiapo, May second, nineteen hundred and five.

(Signed)

CALIXTO VILLAFRANCA.

Indorsed on margin: Antonio Enriquez y Sequera with Ciriaca de Villanueva y Sierra. Parish Seal.

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EXHIBIT B.

Copy of the Will of Antonio Enriquez y Sequera, Deceased.

No. 33.

In the name of God, the Father Almighty, Amen.

I, Antonio Enriquez y Sequera, European Spaniard, of age, married, Chief of Administration of the Second Class, unemployed, and a resident of the District of Binondo of the City of Manila, the legitimate son of Francisco Enriquez and Gertrudis Sequera, deceased, the former being a native of the province of Alicante, and the latter a native of the province of Granada, in Spain, being in good health, thanks to Divine Mercy, and in the full enjoyment of my mental faculties, Believing in the Mystery of the Holy Trinity and other Mysteries of the Roman Catholic and Apostolic Church, in which faith I have lived and promise to live and die, hereby make my last will and testament as follows.—First. I commend my soul to God, our Lord, and command that my body be buried in the public cemetery of this Province of Manila, leaving to my executors' judgment my shroud and burial expenses, and the masses to be said for the salvation of my soul.—Second. I bequeath to the *mandas forzosas* one dollar.—Third. I declare that I was married in *facie Ecclesie* with Doña Ciriaca Villanueva, in which marriage the following children were born. Dolores, Francisco, Rafael, Josefa, Jorge, Rosario, Carmen, Cayetano, Gertrudis, Antonio, Trinidad, Manuel and Concepción, all of whom are now living and unmarried.—Fourth. I appoint as my testamentary executors Doña Ciriaca Villanueva, my wife, and she failing, my son, Francisco, and he failing, my other son, Rafael, relieving them from the necessity of giving bond, and extending the time for such period as may be necessary for the rendition of account and the execution of this my last will.—Fifth. I appoint as guardian of my minor children my said wife, Ciriaca Villanueva, and she failing, my son Francisco, and the latter failing, my other son, Rafael,

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relieving them of the necessity of giving bond, they having my entire confidence.—Sixth. I appoint as my only and universal heirs all of my said children named in the third clause hereof, and such as may be hereafter born to me, so that upon my death they may succeed to and enjoy all of my property, rights and actions of whatsoever nature which I now have or may hereafter have.—Seventh. I request my executors to collect and pay all my lawful credits and debts.—Eighth. I declare that my said wife, Ciriaca Villanueva brought no property to the marriage, but she is entitled to one-half of all my holdings, all of my property belonging to the conjugal partnership.—Ninth. I hereby revoke and annul all previous wills and testamentary dispositions executed or made by me, either in writing, by word, or in any other manner whatsoever, so that no such wills or testamentary dispositions have any legal force either judicially or extrajudicially, and I hereby direct that this will and testament be the only one binding and be complied with and considered as my last will and testament. Done at the residence of the clerk Francisco Salanova on Calle San Vicente of the District of Binondo in the presence of the witnesses Juan O'Ryan, a European Spaniard residing in the District of Santa Cruz, Manila, and Fernando de las Cajigas, a Filipino Spaniard and attorney-at-law, residing in the District of Santa Cruz of the City of Manila, Don Juan Antonio Gomez, a Filipino Spaniard and a resident of this City, Mariano O'Farrel, a Filipino Spaniard residing in the District of Santa Cruz, and Graciano Gonzaga, a native Indian, residing in the District of Santa Cruz of the City of Manila, all of whom — this

64 document with me this fourth day of May, eighteen seventy-two, and I the undersigned hereby certify as to the identity of the testator and that of the four said witnesses, and to the contents of this will.—Antonio Enriquez.—F. O'Ryan.—Fernando de las Cajigas.—Juan Antonio Gomez.—M. O'Farrell.—Gracio. Gonzaga.—Before me: Francisco Salanova.—The foregoing first copy is a true and correct transcript of its original appearing at pages 122 to 125 of my protocol for this year, to which I certify. And at the request of the testator I issue this certified copy consisting of three pages or sheets of stamped paper, Domingo Brillante Perez and Pedro Bacani being witnesses to the correctness of the same. Binondo, this sixth day of May, one thousand eight hundred and seventy-two.

(Signed)

FRANCISCO SALANOVA.

A true copy:

(Signed) NAZARIO CONSTANTINO.

I certify that the foregoing is a true and correct copy of its original attached to the record of the proceedings relating to the estate of Antonio Enriquez v Ciriaca Villanueva, and at the request of Rafael Enriquez I issue the same, duly signed and sealed with the official seal of this Court, in Manila, this sixth day of September, 1905.

[Seal of Court.]

(Signed)

J. McMICKING,

Clerk of the Court of First Instance of Manila.

(Revenue stamp, 20 cents.)

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PLAINTIFFS' EXHIBIT "A."

Montagne & Dominguez, Attorneys.

MANILA, P. I., February 12, 1904.

Alberto Barreto, Esquire, Registrar of Property for City of Manila,
P. I.

DEAR SIR: My clients, who are the plaintiffs in an action now pending in the Court of First Instance of the City of Manila, entitled "Rafael Enriquez et al., plaintiffs, vs. Francisco Saez Co-Tiongco, et al., defendants", desiring to have a certified copy of the record of inscriptions appearing in the books of your Registry as to the property situated in the City of Manila, commonly known as the Old Theater of Binondo, bounded by Dasmariñas, Marquina, Ugalde and Poblete streets, showing all the entries affecting the said property in the order in which they were made, I have the honor to request you to issue the said certificate, literally, upon payment of the corresponding fees.

Yours truly,
(Signed)

MONTAGNE & DOMINGUEZ.

Ex. "C."

Alberto Barretto y Blanco, Registrar of Titles for the City of Manila,

Certifies: That Messrs. Montagne & Dominguez, having requested the undersigned, in behalf of their clients, Rafael Enriquez et al., to issue a certified literal copy of all the entries appearing in this Registry affecting the property known as the Old Theater of Binondo, in the block bounded by Dasmariñas, Marquina, Ugalde and Poblete streets, for the purpose of filing such copy in an action which is now pending in the Court of First Instance of the City of Manila, 66 entitled Rafael Enriquez et al., plaintiffs, he proceeded to examine the corresponding books in which the following entry appears at page 89 of provisional volume 5 of the Binondo Section.

Property No. 1147. First inscription. Urban. A building lot of a polygonal shape resembling a trapezoid and improvements therein consisting of fifteen *accessorias* with stone walls and tile roof fronting on Calle Dasmariñas and other buildings not mentioned, some of which have a galvanized iron roof and others tile roofs upon the same lot and known as the "Old Theater" of Binondo, said property lying in the block formed by Dasmariñas, Ugalde, Marquina and Poblete streets, District of Binondo, within the Northern Zone of the Registry of Property, and numbered 41 to 75, Calle Dasmariñas. It is bounded on the right by calle Ugalde, on the left by Calle Marquina and on the back by Calle Poblete. It measures 59 meters and 60 centimeters in front, 30 meters and 50 centimeters on the right, 30 meters and 55 centimeters on the left and 59 meters and 60 centimeters on the back, making a superficial area of 1820 square meters and 51 decimeters. No record of any lien. Its present value is

33,915 dollars. Long before the mortgage law went into effect in these Islands and at the request of Francisco de Paula Cembrano as the executor of Prudencio Santos, deceased, the Lieutenant Mayor of this Province directed that the property of the estate of the said deceased which included the premises known as the Old Theater of Binondo and the lot upon which it stood in said District of Binondo, facing the houses of Jose Pascual Jugo, Catalino Villafranca and Juan Cabarrus, a plaza and street intervening, bound- on the right by the houses of Ignacio Ponce de Leon; on the left by a lot belonging to the estate of Mariano Escalante; and in back by land belonging to Rosaura Cortes and the said Escalante's estate, be appraised

67 and sold at public auction. The whole property was purchased at such public auction by Don Antonio Enriquez for the sum of 16,360 dollars. By an order dated April 19th, 1861, the Court directed that the corresponding deed of conveyance be executed in favor of the purchaser at the judicial sale. Don Luis de Yandiola, former Lieut. Mayor of this province, by virtue of the royal authority vested in him by law and in behalf of the heirs of the said deceased, accordingly sold the property in question to the said Antonio Enriquez for the price above set forth, which the purchaser paid. Mr. Enriquez, according to other documents presented was also surnamed Sequera, he being of legal age and a resident of this City, formerly married to Ciriaca Villanaeva. The title of this property is recorded in favor of Antonio Enriquez y Sequera who acquired the same by purchase. All of the foregoing appears from the deed evidencing the judicial sale, executed in this City on the eighth of July, 1861 before the Notary Eduardo Olgado, the present description of the property being set out in the instrument to which the following entry refers. The first copy of this instrument was presented to this office at eight o'clock to-day as per entry No. 2231, page 42, volume 9 of the Diary. The foregoing recital agrees with the document to which it refers and in testimony thereof I sign these presents in Manila, this 14th day of September, 1901. Simplicio del Rosario. Fees, \$25.00 Sec. 7 of the Tariff."

At page 90 of the same volume and section the following entry appears. "Second Inscription. Urban Property. Lot having the shape of a polygon resembling a trapezoid and fifteen two-storied *accessorias* with stone walls and tile roof fronting on Calle Dasmariñas, and other buildings not mentioned *some*, some of which have a galvanized iron roof and others tile roofs, known as the "Old Theater" of Binondo. This property is situate in the block bounded

68 by Dasmariñas, Ugalde, Marquina and Poblete streets, numbers 41 to 75, in the District of Binondo, and within the demarcation of this Registry. The further description of this property as taken from the title deed of the *dame* appears in the previous entry. There is no record or any lien or incumbrance — Don Antonio Enriquez y Sequera, of age, and a resident of this City, acquired this property in the *mannder* stated in the said entry. As the result of a summary action instituted in the Court of First Instance of Intramuros and later transferred to the Court of Binondo, by counsel for José Moreno Lacalle, and continued after the latter's death by his widow and testamentary executrix,

Florencia de Victoria y Mendoza against the estate of the said Antonio Enriquez y Sequera, represented by his executor and administrator, Francisco Enriquez y Villanueva, to recover the sum of 6,290 dollars for services rendered by the said Moreno Lacalle to the estate, the property in question was attached and advertised for sale at public auction. Upon the day set for the sale various bids were made and the property was sold to the highest bidder, Francisco Saez Co-Tiongco, who offered 33,915 dollars, which sum was deposited into Court as appears from an order of the 28th of September last year. Don Francisco Enriquez having failed to execute the deed of transfer as directed by an order of the same date, a new order was entered by the Court on its own motion October third, following, directing that the said deed be executed. José Maria Memije y Zablan, of age, married, acting Judge of the Court of First Instance for the District of Binondo, and a resident of this City by virtue of the authority bested in him by law, and acting in behalf of the estate of Antonio Enriquez y Sequera, deceased, accordingly sold the property in question to the Christian Chinaman Francisco Saez Co-Tiongco, of age, married, and a resident merchant of this City for the said sum of 33,915 dollars, which, as already stated, was paid into Court. And it appearing from the agreement made October twenty-third, 1893, by and between Don Francisco, Don Rafael, and Don Antonio Enriquez y Villanueva, the children and heirs of Antonio Enriquez y Sequera and Ciriaca Villanueva, deceased, at the office of Attorney Lacalle who also signed that agreement, that the said heirs thereby unanimously decided to alienate the property in question and to pay Mr. Lacalle for his services in connection with the settlement and distribution of the estate with the proceeds of such sale, I hereby register the title thereto in favor of the said Francisco Saez Co-Tiongco who bought the same at public auction. All of the foregoing appears from the previous entry of the deed evidencing the judicial sale and executed in this City on the twelfth of October before the Notary Public of the said City, Calixto Reyes y Cruz, and of the document relating to the delivery of certain papers at the request of Don Jose Moreno Lacalle, made on the ninth of March, 1898, before the Notary Public of this City Don Enrique Barrera y Caldes, a copy of which document was presented in this Office to-day at eight o'clock A. M., as shown by entry number 2,231, page 42, volume 9 of the Diary. In virtue whereof, I sign these presents in Manila, this 14th day of September, 1901.—Simplicio del Rosario.—Fees \$25.00, Section 7.

The following note appears on the margin of the first entry:

"Concerning the property to which this entry refers, there now exists a litigation relating to the validity of a title whereby the Chinaman Francisco Saez Co-Tiongco acquired the same, the said litigation having been instituted by Rafael Enriquez for himself and as the administrator of the estate of his deceased father, Antonio Enriquez, according to a notice signed by Attorneys Montagne & Dominguez, and certified to by the Clerk, Mr. J. McMicking. Ma-

70 nila, August 23, 1902. S. del Rosario.—Fees 50 cents. Section 6.”

And at page 117 of volume 2 of the Binondo Section, the following entry appears:

Third Inscription. Urban Property.—A building lot having the shape of a polygon, resembling a trapezoid, and fifteen two-storied *accessorias*, with stone walls and a tile roof, fronting on Calle Dasmariñas, and other houses which are not mentioned, some of them having galvanized iron roofs and others tile roofs, all of them erected on the same land, more commonly known as the “Old Theater” of Binondo, the said property lying in the block formed by Dasmariñas, Ugalde, Marquina and Poblete streets, and numbered 41 to 75 of the District of Binondo, within the jurisdiction of this Registry and section of Binondo. The further description of this property as taken from the original title will be found in the first inscription under this number. There is no record of any lien or incumbrance. Francisco Saez Co-Tiongco, of age and married, and a resident merchant of the District of Santa Cruz is the owner of this property, he having purchased the same at a public auction as shown by the previous inscription, and the sale made by him to the Chinaman Cho Jan-Ling, of age, unmarried, and resident merchant of the district of Binondo, for the sum of sixty-thousand dollars, Mexican currency, which said sum the vendor acknowledges receiving prior to the execution of the deed of sale, from the vendee, in local currency. The Chinaman Cho Jan-Ling had recorded the title acquired by him to the property registered under this number. All of the foregoing agrees with the previous entries relating to the deed of sale executed in this City on the 11th of July last, before the Notary Public, Calixto Reyes y Cruz, the first copy of which, issued on the day following the execution of said deed, was presented in this Office to-day at 11 A. M., as shown by entry number 61, page

71 21, of the tenth volume of the Diary. The foregoing agrees with the document to which I refer, and in witness whereof, I sign these presents in Manila, this 23rd day of August, 1902—Simplicio del Rosario. Fees \$25. Section 7.”

The foregoing entries and marginal note literally agree with the originals thereof, to which I certify, and in testimony thereof, I issue these presents in Manila, this 13th day of February, 1904.

(Signed)

ALBERT BARRETTO.

Fees \$8.00, Sections 9 and 10 of the Tariff.

EXHIBIT D.

To the Register of Property, Manila.

SIR: I need for my own personal use a copy of the notice of *lis pendens* filed with you by my attorneys Mongagne & Dominguez in the month of May of the year 1902 with reference to the property known as the “Old Theater” in the City of Manila in an action pending in one of the Courts of First Instance of this City entitled Rafael Enriquez et al., vs. Florencia Victoria y Francisco Saez

Co-Tiongco. I have the honor to request that you make a certified copy of the said notice of *lis pendens*, for which I will pay the lawful fees.

Manila, April 8th, 1903.

(Signed)

RAFAEL ENRIQUEZ.

Francisco Ortigas y Barcinas, Register of Titles for the City of Manila,

Certifies: That Rafael Enriquez having requested that a certified copy of the notice of *lis pendens* mentioned in his application be issued to him, upon examination of the book in which such documents are recorded, the following copy thereof is hereby issued:

"In the Court of First Instance of Manila.—Rafael Enriquez, for himself and as administrator of the estate of Antonio Enriquez y Sequera, deceased, Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudis Enriquez, Antonio Gascon, minor, plaintiff, versus, Francisco Saez Co-Tiongco and Florencia Victoria, defendants. Notice is hereby given that on the 25th of April, 1902, an action was instituted in the Court of First Instance of the City of Manila by the plaintiff herein against the defendants above-mentioned, which said action is now pending in this Court; that the objection of the said action is to set aside and have declared null and void the title of the defendants and each of them, and to establish the title to a certain piece of property in the City of Manila known as the "Old Theater," having a superficial area of 1,567 square meters and 71 centimeters, fronting on Calle Dasmariñas, bounded on the right by Calle Ugalde, on the left by Calle Marquina, and extending to Calle Poblete.—Montagne & Dominguez, Attorneys for Plaintiffs. Manila, May 1st, 1902.—I certify as to the pendency of the action above referred to.—J. McMicking, Clerk of the Court of First Instance of the City of Manila, Ex-Officio Notary Public. The foregoing notice was noted on the margin of the entry on page 90, provisional volume 5 of the Binondo section, Property No. 1147, second inscription. Manila, August 23rd, 1903.—Simplicio del Rosario."

The foregoing is a true and correct copy of its original, to which I certify, and in witness thereof, sign these presents in Manila, this eighth day of April, 1903.

73 (Signed)

FRANCISCO ORTIGAS.

Fees—\$2.00 Sections 9 and 10 of the Tariff.

EXHIBIT "E."

The Registrar of Property for the City of Manila.

Montagne & Dominguez, as counsel for Rafael Enriquez et al., state: That for the purposes of a civil action which is now pending in the Court of First Instance of this City between their clients and Francisco Saez Co-Tiongco et al., they desire to obtain a certificate

as to whether a certain notice of *lis pendens* given in the said action was presented to and acted upon by your Office before or after the presentation and registration of a deed of sale executed by the said Saez Co-Tiongco in favor of the Chinaman Cho Jan-Ling, both documents relating to the property known as the "Old Theater," situated in the block formed by Dasmariñas, Ugalde, Marquina and Poblete streets of the District of Binondo, and accordingly request that certificate be issued of such facts as they appear in the Day Book of that Registry.

Manila, February 18th, 1904.

(Signed)

MONTAGNE & DOMINGUEZ.

Alberto Barretto y Blanco, Register of Titles for the City of Manila, Certifies: That by virtue of the foregoing petition presented by Attorneys Montagne & Dominguez in behalf of Rafael Enriquez et al., requesting that in accordance with the day book of this Registry a certificate be issued as to whether a notice of *lis pendens* was presented and acted upon before or after the presentation and registration of a deed of sale executed by Francisco Saez Co-Tiongco in favor of the Chinaman Cho Jan-Ling, both documents relating to the property known as the "Old Theater" situated in the block bounded by Dasmariñas, Ugalde, Marquina and Poblete Streets of the District of Binondo, the undersigned proceeded to examine the day book from which the following appears:

The notice of *lis pendens* in question was presented in this office on the 23rd of August, 1902, at nine o'clock A. M., according to entry number 60 on page 21, volume 10 of the Diary, on the margin of which there is a memorandum note which shows that it was acted upon on the same day.

The deed of sale executed by Francisco Saez Co-Tiongco in favor of the Chinaman Cho Jan-Ling, referred to in the foregoing request, was also presented in this Office on the said 23rd day of August, 1902, at eleven o'clock, A. M., as shown in entry number 61 on page 21, of the said volume 10 of the Diary, on the margin of which there is also a memorandum note to the effect that the inscription was made on the same day.

It appears, therefore, that the notice of *lis pendens* was presented and acted upon before the deed of sale was presented as shown by their respective entries.

The foregoing agrees with the record and antecedents to which it relates, and in witness thereof, I sign these presents in Manila, this 18th day of February, 1904.

(Signed)

ALBERTO BARRETTO.

Fees \$1.00 Section 11 of the tariff.

EXHIBIT "F."

Number Four Hundred and Eighteen.

In the City of Madrid, this sixteenth day of November, 1895, before me, Pablo Pedro Vich y Ferrer, a notary public in and for this City, in the absence of the Notary Federico Plana Pelliza, personally appeared:

Doña Rosario Enriquez y Villanueva, thirty-six years of age, widow, pensioner, a resident of this City, living at number fifteen Calle Conde de Aranda, all of which appears from her personal cedula of the ninth class, issued on the 17th of September, of this year;

Don Cayetano Enriquez Villanueva, twenty-six years of age, married, soldier, a resident of this City, living at number fifteen Calle Conde de Aranda, all of which appears from his personal cedula which he exhibited to me, number 9,720, dated August 30th of this year;

Doña Gertrudis Enriquez Villanueva, 29 years of age, single, and residing at number fifteen Calle Conde de Aranda, all of which appears from her personal cedula of the eighth class exhibited to me, issued the eighth instant, and numbered 46,485, and

Doña Trinidad Enriquez Villanueva, twenty-four years of age, single, residing at number fifteen Calle Conde de Aranda of this City, all of which appears from her personal cedula exhibited to me, number 46,436, issued on the eight instant;

And having in my judgment the necessary legal capacity to execute this instrument, freely and of their own will, said: That they hereby grant and confer special power, as ample as may be requisite and necessary, to their brother Rafael Enriquez y Villanueva, of age and a resident of this City to, in their names and stead, perform, with reference to the property which they have in

76 Manila, Philippine Islands, from the estates of their deceased parents, Antonio Enriquez and Ciriaca Villanueva, the following acts: 1. To arrange and settle the partition of the property of the estate of their deceased parents, taking possession of their respective shares therein and executing the necessary instruments in connection therewith; 2. To demand an accounting from those who should render the same to them in consequence of their having administered or held in trust property belonging to them; to examine, reject or approve such accounts, paying any balance which may be due from them, executing the necessary documents therefor; 3. To compromise and compound all claims, rights or actions which the grantors have or may have, in the manner he may see fit; and he is hereby authorized to submit his decisions to the judgment of arbitrators, or of a third party, in case of disagreement, the grantors hereby promising to abide by such judgment or decision; 4. To claim, receive and collect all sums due to his grantors, either in cash, goods or other effects or securities, giving receipts therefor and canceling any mortgage or mortgages upon the property of the debtors or sureties of such debtors; 5. To administer the property which the

grantors have or may acquire in Manila, Philippine Islands, collecting the rents therefrom, and to lease the same for the time and under the conditions which he may see fit, ousting and ejecting tenants whenever he deems it necessary; 6. And if for the purposes hereinbefore set out, expenses should be incurred, he is hereby authorized to sell and dispose of so much of the said property as may be absolutely necessary to meet such expenses, such sale to be made by him in the manner and under the conditions which he sees fit, receiving the proceeds thereof, or otherwise fixing the time for the payment of the purchase price, declaring any liens which may exist upon the same, and for this purpose to execute such deeds and instruments as may be necessary; 7. To appear before the municipal

77 justices in acts of conciliation and verbal actions, accompanied by a person of his confidence, filing all necessary complaints, abiding by any agreement made or by any judgment rendered, if, in his opinion, he should do so, otherwise appealing from the same, to have it set aside; 8. To appear before the authorities, the Supreme Court, the Courts of First Instance and any other tribunals, in all actions, whether civil or criminal of voluntary jurisdiction, or administrative, and any other actions or proceedings in which the grantors of this power may be interested, prosecuting or resisting such actions and performing all other acts that his grantors would perform themselves, filing such pleadings as he may think necessary to the final determination of all such actions and proceedings.

So said in the presence of the witnesses to this instrument, Zacarias Lopez Sanz and Domingo Faldon Mara, of age and residents of this City, who claim to know the grantors and certify as to their identity. And the grantors having been informed of the right which they have by law to read this instrument themselves, they waived such rights, whereupon I proceeded to read the same to them, the contents of which they ratified, signing hereon with the witnesses, to all of which, as well as to the identity of the said witnesses, their professions and residences, I certify.—Rosario Enriquez.—Gertrudis Enriquez.—Trinidad Enriquez.—Cayetano Enriquez.—Zacarias Lopez.—Domingo Faldón Mora.—(Signed) Pablo Pedro Vich.—rubric—.

The foregoing is a true copy of the original on file under number four hundred and eighteen of the protocol of public instruments of the Notary Federico Plana Felliza, in whose absence I am acting; and at the request of the grantors I sign and seal these presents on one sheet of paper of the eighth class and two of the thirteenth class, numbered 82,833 and 1,534,019 and 1,534,025; and after noting the issuance of this copy on the original, in Madrid, this 23rd

78 day of November, 1895. Notary Seal. Pablo Pedro Vich.—rubric—.

Legalization. The undersigned notaries of this City hereby certify that the signature and seal of the Notary Pablo Pedro Vich appearing at the foot of the foregoing instrument are authentic.

Madrid, November 25, 1895.

JOSE APONTE.

GREGORIO SANTOS Y SANTOS.

EXHIBIT "G."

Number Four Hundred and Fifty-six.

In the City of Madrid, this second day of December, 1899, before me, Manuel de Bofarrull y de Palan, Doctor of Civil Law and a Notary of this City, personally appeared Doña Rosario Enriquez y Villanueva, of age; widow, a pensioner, and a resident of this City, as appears from her personal cedula of the ninth class, number 24,173, dated October 23rd, this year; Cayetano Enriquez Villanueva, of age, married, a soldier, and a resident of this City as appears from his personal cedula of the ninth class, number 9,773, dated September 25th, this year; and Gertrudis Enriquez Villanueva, of age, single, a pensioner, and a resident of this City, as appears from her personal cedula of the ninth class, number 24,238, dated October 23rd, this year:

And having in my judgment the necessary legal capacity to execute this instrument, said that they hereby conferred especial power, as ample and sufficient as may be necessary, upon Rafael Enriquez Villanueva, married, and a resident of Manila, Philippine Islands, to, in their names and stead, sell or otherwise dispose of all the real estate, or any part thereof, which the grantors of this power have, or may have acquired, by inheritance from their father Antonio Enriquez y Sequera, hereby authorizing their said attorney to dispose of such property for the price and under the terms and conditions which he may deem fit. They further authorize and empower the said Rafael Enriquez y Villanueva to demand an accounting from those who ought to render such accounts and to either reprove or reject the same as he may see fit; to claim, collect and receive all sums due to the said grantors for any reason whatsoever, canceling such mortgages, liens or attachments as there may be upon such property, to secure the payment of said sums; to take judicial or extrajudicial possession of any property, and for this purpose to perform all necessary acts to establish same, instituting such actions and proceedings as may be necessary; to correct and rectify the superficial areas, metes and bounds of any tract or tracts of land, and for this purpose he is hereby authorized to, by himself, or with the assistance of the former owners and adjoining tenants, institute such proceedings, or make such measurements and perform such acts as the nature of the case may require, executing all private and public instruments which their said attorney may see fit in order to make such corrections and rectifications, and to have the same recorded in the Registry of Property, demanding the correction of any errors which he may notice, as well as the amplification, explanation or nullity of any matters therein appearing, as he may see fit; To make a partition of any property jointly held by the grantors under the conditions which he may see fit, and finally to execute and sign all public instruments, whether private or otherwise, which he may deem necessary.

The grantors further said that they ratified and confirmed the power of attorney by them given to the said Rafael Enriquez Vil-

lanueva before the Notary Public of this City, Federico Plana Felliza.

So said the grantors in the presence of the witnesses to this instrument, Don Jose Feced y Temprado y Magistrado and Jose Morales y Durán, to all of whom I read this instrument. As to the contents of this instrument, the identity of the said witnesses, who
80 certified as to the identity of the grantors, I, the notary, certify.—Rosario Enriquez.—Gertrudis Enriquez.—Cayetano Enriquez.—Jose Morales Durán.—Jose Feced. (Signed) Manuel de Bofarull, rubric.

The foregoing is a true copy of its original on file under the above said number in my protocol for this year, and at the request of the grantors, I issue these presents on a sheet of paper of the eighth class, number 80,823, and one of the tenth class number 1,400,072, which I have signed and sealed in Madrid on the day following its execution, to which I certify.

(Signed) MANUEL DE BOFARULL. [NOTARY'S SEAL.]

I hereby certify that Don Manuel de Bofarull, whose signature is at the foot of the preceding document, is a notary public in and for the City of Madrid and as such is entitled to full faith and credit.

In witness whereof I have set my hand and official seal at Madrid this sixth day of December, 1899.

(Signed)
[CONSULATE SEAL.]

DWIGHT F. REED,
United States Vice Consul.

No. 289. Fees \$2.00 U. S. Gold.

81

EXHIBIT H.

In the Court of First Instance of Intramuros, This 11th Day of March, 1901.

Order.

1. On the second instant counsel for Antonio Jose Gascon y Enriquez, a minor, filed a petition asking that the order of the 31st of May of last year be declared null and void for the reason that it was therein directed that the administration of the estates of Antonio Enriquez and Ciriaca Villanueva be turned over to Francisco Enriquez, relying therefor upon the same grounds as in previous petitions.

2. A copy of the said petition having been served upon Francisco Enriquez, the latter made no objection to the granting thereof, and considering

1. That the order of the 31st of May, 1900, at page 27 which petitioner asks be set aside in his petition of the 2nd of March, whereby the appointment of Rafael Enriquez as administrator, made on the 14th of the same month, was vacated, was entered upon another petition presented on the 28th of May, 1900, page 27, by Attorney Pablo

Antonio Martinez, wherein the latter asked that the said order of the 14th of May be cancelled for the reason that his client, Francisco Enriquez, had been set at liberty under bond. It will be noticed, however, that the said attorney Pablo Antonio Martinez did not file with his petition any power of attorney from Francisco Enriquez and has not given written notice of the change of lawyers as required by section 11 of General Orders No. 29, dated July 19th, 1899, which said legal provision has therefore been violated by counsel in the filing of his petition of the 28th of May. The said order of the 31st of the same month was consequently made without there

being a petition filed in due form upon which such order
82 could be based, particularly in a civil case like this in which the intervention of the Court is purely mercenary, as has been practically admitted in the motion filed by Attorney Francisco Ortigas on the 5th of June, 1899, in behalf of Francisco Enriquez, page 48.

2. For the reasons set out in the orders of the 15th of February, last, it was decided that the Court should intervene, as shown by the order of the 6th of November, 1899, which was appealed from, relating to the collection of the rent of property of the estate in question and the deposit of the said rent in the Monte de Piedad, and it became necessary for the proper administration of the said property that a person be appointed to administer the same for the reason that the actuary, although he may intervene in the collection of the rent, can not properly administer the property without abandoning or at least neglecting his own official duties.

3. The legal reasons why the Court intervened were (1) Because the executor Francisco Enriquez is at present subject to four separate prosecutions for four different crimes of estafa alleged to have been committed by him while acting as executor and administrator of the estate in question, which said four criminal prosecutions, although not yet finally decided on account of the exaggerated procedure of the old legislation, so that they may be considered a sufficient cause for his removal from his office as executor under paragraph two of section 237 of the Civil Code, nevertheless are sufficient to show misconduct on his part as such administrator, which undoubtedly brings the case within the provisions of section 4 of article 238 of the same Code, which relates to the removal of guardians, and is applicable by analogy to the office of executor. (2) The fact that he has failed for the last eight or nine months to comply with
83 the sacred obligation to pay the sum of 80 dollars monthly to each of the heirs, among them the minor Antonio Jose Gascon y Enriquez, an orphan whose precarious situation in a foreign land demands in the name of humanity immediate justice without regard to mere legal technicalities, particularly when it is considered that the money paid for the support of the heirs does not come from the pocket of any particular individual but from the property of the estate which belongs to all of them entitled to support.

4. Judicial intervention having been decided upon for the reasons above set forth, it becomes necessary, lest the Court render itself

liable for leaving the property of the estate unprotected to the prejudice of the heirs, one of whom is a minor, to appoint a suitable person to take charge of and administer the same; and Don Rafael Enriquez, in the opinion of the Court, is a proper person, first, because he is the one designated in the second place by the testator Don Antonio Enriquez as executor of the latter's estate; second because he is the representative and attorney-in-fact, with power of administration of a majority of the participants in the said estate, and a person of the absolute confidence of the said participants; third, because he was once appointed by the Court of First Instance, in May, 1900, as administrator of the said estate, when Francisco Enriquez was arrested on a criminal charge; and fourth, because if a stranger were to be appointed as such administrator, a very large bond would have to be required, which would probably make difficult or impossible the acceptance of such appointment.

Upon consideration of the legal provisions applicable to the case at bar, the Hon. Jose Basa Enriquez, Judge of the Court of First Instance of Intramuros, before me the undersigned Clerk, said:

That he hereby sets aside the said order of the thirty-first of 84 May, 1900, page 27 of the record, and ratifies and confirms the appointment of Mr. Rafael Enriquez as administrator of the estate of his deceased parents, Antonio Enriquez and Ciriaca Villanueva, made on the 14th of May, directing that this order be immediately notified to all the tenants of the property in question, and that the adjudging part of this decision be published in the newspapers of this City, La Democracia, La Union, and El Comercio. The Court further directed that the two documents showing the deposit made in the Savings Bank of the sum of ninety-nine dollars and ninety cents, and three dollars, respectively, collected during the month of February of this year, be delivered to the said Rafael Enriquez, together with all uncollected bills, the said Rafael Enriquez to render an account monthly of the collections and disbursements made by him, any balance due to be deposited in the Savings Bank after paying the sum of eighty dollars monthly to each of the heirs for their support, to which I certify.

Before me,

(Signed)

FRANCISCO R. CRUZ.
JOSE BASA.

I certify that the foregoing is a true and correct copy of its original, appearing in piece 47 of the record relating to the estate of Antonio Enriquez and Ciriaca Villanueva. And at the request of Don Rafael Enriquez, I issue these presents in Manila, this sixth day of September, 1905.

(Signed)

J. McMICKING,
Clerk of the Court of First Instance of Manila.

[COURT SEAL.]

85

EXHIBIT "I."

In the Court of First Instance of Intramuros, November 7, 1899.

Order.

On the twenty-eighth of December, last year, Don Francisco Enriquez y Villanueva stated in writing to this Court that he, as partitioner appointed by Antonio Enriquez y Sequera, had proceeded to make a distribution of the property of the latter's estate and of the estate of Ciriaca Villanueva, deceased, in view of the fact that the heirs had refused to appoint a person to act as partitioner, and for this reason he submitted the said partition to the approval of the Court in the manner prescribed in section 1060 *et seq.*, accompanying his said statement with part of the proceedings relating to the inventory, valuation and distribution of the said estates, authorized by the Attorney Pablo A. Martinez, and another record containing the documents evidencing the method employed in such partition.

By an order made on the 29th of December, 1898, his said partition and accompanying documents *was* allowed to be filed, and it was directed that the proceedings relating to the partition be filed with the Clerk for the inspection of the parties for a period of eight days, which order was served upon the parties mentioned therein.

The aforesaid order having been served upon Francisco Enriquez, his wife, Carmen C. de Enriquez, Trinidad Enriquez, her husband Francisco L. Arbizú, Antonio Enriquez, Jose de Gascon and Rafael Enriquez, Francisco Enriquez appeared for himself and in behalf of his wife and Carmen Enriquez, and expressed his approval of the manner in which the partition had been made.

At the request of Francisco Lopez Arbizú and his wife, Trinidad Enriquez, the partition proceedings were delivered to them under section 1067 of the Code of Civil Procedure for the purpose

86 of presenting their opposition thereto within fifteen days, which they did through their attorney Eugenio Puron on the twenty-second of January of the present year, wherein they stated that they objected to the approval of the partition as made by Francisco Enriquez for the reason that the matters relating thereto are now pending in, and are the subject of criminal proceedings before the American court; because the Code of Civil Procedure only authorizes the Court to approve such partitions when there are minors or incompetent persons interested therein; because there is a written contract providing that such partitions be made extrajudicially; because in said partition there was *lesion inormisima*; because Carmen de la Cavada is included as an heir, when as a matter of fact she is not such heir; because the property was not equally apportioned among the heirs and, finally because some of the property has been concealed and not included in the inventory which is the basis of the partition, all of which crimes are hereby reported to the Court so that proper action may be taken.

All further proceedings in this case were suspended on account of the cessation of the jurisdiction of the civil courts about the latter part of January. When this jurisdiction was revived in the month of July, last, Don Antonio Enriquez was granted the hearing asked for, and on the eighteenth of August he presented a statement in writing to the Court, signed by Attorney Jose Robles, setting forth that he objected to the approval of the partition proceedings sought by Francisco Enriquez for the reason that the judicial approval of a partition made extrajudicially was unwarranted, when no minors or any absent or incompetent persons are interested therein, and further because the will of Antonio Enriquez expressly prohibited any judicial intervention in the partition of his estate, as also did the agreement made between the parties, and further because there is a criminal action pending in the Court of First Instance 87 of Binondo against Francisco Enriquez for the frauds and forgeries committed by him in connection with the inventory of the property to which the partition relates, and for this reason the said Francisco Enriquez, could not, under section 111 of the Code of Criminal Procedure, have instituted any civil action based upon the same facts which were the basis of the criminal action, and prayed the Court that the costs be taxed against Francisco Enriquez and that the present case be consolidated with the criminal cause pending and based upon the same acts.

The partition proceedings having been served upon the heir, Rafael Enriquez, he, for himself and as attorney in fact of his sisters Rosario, and Gertrudis, and his brother Cayetano, filed a motion on the third of October, signed by Attorney Felipe Calderon, wherein he objected to the approval of the partition in question for the reasons above stated and because there was pending in the Court of First Instance of Binondo a criminal action numbered 82 against Francisco Enriquez, against whom the Supreme Court directed the complaint be filed, as shown by a certificate to this effect of the order made by the Criminal branch of the Supreme Court, whereby the decision of the court below, appealed from, dismissing the complaint, was set aside and the case remanded to the Court of First Instance of Binondo, with instructions that a complaint be filed against Don Francisco Enriquez for the various crimes of estafa alleged in the original complaint, without prejudice to the institution of other criminal proceedings against him upon the charges made by Rafael Enriquez and his brothers, praying further that the costs be taxed against Francisco Enriquez and that the proceedings of the partition as made by him be consolidated with case number 82 of the Court of First Instance of Binondo, and stated that the heir, Jorge Enriquez, chose to redeem the share corresponding to him, and 88 prayed that the action for the recovery of attorney's fees then pending in the Court of First Instance of Binondo be suspended.

Nazario Constantino, as attorney in fact for Jose de Gascon, also objected to the partition on the 25th of October, and prayed that the said partition be disapproved and the costs taxed to Francisco

Enriquez. The Court, by an order made on the thirtieth of the said Month, directed that the matter be brought up for decision.

These proceedings having been instituted by Francisco Enriquez as executor of the estates of his deceased parents for the purpose of obtaining from the Court the approval of the partition made by him extrajudicially, he could only have sought this in the manner prescribed in chapter 2, title 10 of the Code of Civil Procedure, provided there was a voluntary testamentary action pending, or that there was a minor, or an incapable or absent person whose whereabouts were unknown, interested in the estate, for these are the only cases to which section 1032 of the Code applied. In the present case, there are not such interested parties and there has been no testamentary proceeding instituted, not only because the testator expressly prohibited any such proceeding, but also because the parties so agreed in the contract appearing in the record.

In view of the fact that the law does not authorize the judicial approval of a private partition of an estate, no such thing being possible in a testamentary proceeding, or in any other known to the law where the knowledge and consent of the parties in interest is lacking, and particularly where all of those having an interest therein have objected to such approval, the procedure laid down in section 1669 can not be followed in the case at bar for the purpose of looking into the merits of the opposition made *made* 89 by the heirs, for the reason that that procedure is peculiar to testamentary proceedings, which in this case had not been had because of the agreement of the parties and the testator's express prohibition.

Even if these proceedings were to be considered as an action of voluntary jurisdiction, under the general provisions contained in section 1794, the parties having an interest in the estate who are not represented by Francisco Enriquez having opposed the proceedings, the same are converted into an ordinary action which must be proceeded with in the manner provided by law.

It having been shown that there is now pending in the Court of First Instance of Binondo a criminal action, numbered 82, against Francisco Enriquez for the crimes of forgery and estafa alleged to have been committed by him while acting as executor of the estate, and the concealment of some of the property belonging thereto, it is evident that the said Francisco Enriquez has not been able to make the partition, and can not make the same until the said criminal action is terminated by a final judgment, and the inventory which is the necessary basis of the said partition duly approved.

The said criminal proceeding against Don Francisco Enriquez, in which civil as well as criminal actions are sought to be enforced, being still pending, no other civil action relating to the same facts which are the subject of the criminal proceedings, wherein a judgment might be rendered giving rise to a conflict of jurisdiction or to the absurdity of a civil action annulling penal and civil actions which are sought to be jointly enforced and which must be decided in the same proceedings, can be maintained without violating the

provisions of sections 111 and 114 of the Code of Criminal Procedure and of section 1032 of the Code of Civil Procedure.

Don Francisco Enriquez, being aware of the fact that
90 there was a criminal action pending against him for certain acts alleged to have been committed by him while acting as executor, could not, and should not have proceeded to make such partition without the consent of the parties in interest until the said criminal case was finally determined, and in no case should he have sought a judicial approval, which he could not obtain, of the said partition for the simple reason that the law does not authorize it, and further because the consent of all of the interested parties was necessary and he, Don Francisco, knew that they were all opposed to such approval.

It appearing that there is a criminal action now pending in another court relating to the same facts; that one of the parties has preferred criminal charges in these proceedings which may be of some assistance in the trial of the case pending, all further proceedings herein should be suspended and the record forwarded to the Court of First Instance of Binondo to be attached to criminal cause No. 82, wherein the said Francisco Enriquez is charged with certain fraudulent acts in connection with the administration of the estate, and in the inventory of the property with reference to which the partition was made, all of these matters having connection with the criminal case in question.

Don Francisco Enriquez being the only one who instituted these illegal proceedings, which were for his own benefit, he should be taxed with the costs.

It being necessary to suspend all further proceedings in this action, which was illegally and improperly instituted, it is not proper to make an order directing that there be attached to the record thereof the proceedings relating to the claim for attorney's fees, as
91 requested in the petition of the 18th of August signed by Don Antonio Enriquez, nor as to the reservation of a right of redemption asked for in the petition of Rafael Enriquez dated October third, for such matters, being of a contentious nature, would require the existence of an action and a judicial discussion, which does not exist and would be improper.

After a consideration of sections 1032, 1062 to 1072, 1794 and 1800 of the Code of Civil Procedure and of sections 111 and 114 of the Code of Criminal Procedure in connection with sections 242 *et seq.* of the Revised Compilation, Don Jose Martinez Quintero, judge of the Court of First Instance of the District of Intramuros, acting, before me the Clerk, said: that the approval of the partition of the estate of the deceased spouses, Antonio Enriquez and Ciriaca Villanueva, extrajudicially made by Francisco Enriquez as executor, is denied; that all further proceedings in this case be suspended and all papers therein transmitted to the Court of First Instance of Binondo to be attached to the record of case No. 82, now pending therein and relating to the same facts which are the subject of discussion in the partition proceedings; the consolidation of the action instituted by Attorney Moreno Lacalle for the recovery of fees with the present action is hereby denied; the reservation of the right of

redemption prayed for is also denied, and Don Francisco Enriquez is hereby taxed with the costs of these proceedings.

(Signed)

JOSÉ MARTINEZ, *Acting.*

Before me:

AMBROSIO V. FUENTES.

I certify that the foregoing is a true and correct copy of its original appearing in piece number 61 of the record relating to the judicial approval of the partition of the estate of Antonio Enriquez and Ciriaca Villanueva y Soliz. And at the request of Don Rafael Enriquez I issue these presents in Manila, this sixth day of September, 1905.

(Signed)

[COURT SEAL.]

J. McMICKING,

*Clerk of the Court of First Instance
of the City of Manila.*

92

Ex. "J"

Jose Moreno Lacalle.

MANILA, August 19th, 1896.

Mr. Rafael Enriquez:

MY ESTEEMED AND GOOD FRIEND: I deem it proper before terminating the proceedings in the partition of the estate of your deceased parents, since I have recently been placed in charge of all the interests of the said estate, to definitely determine the amount which may become due me as attorney's fees, because this is a matter which should be fixed by agreement to the satisfaction of all concerned, and also because the said amount should be known beforehand, so as to be included in and taken into account with the final settlement of the estate.

Therefore, I desire to state in this letter the amount of fees which ought to be paid to me, to-wit: an amount which has been the custom to allow, and as I have observed in practice, that is two and one-half per cent upon the general valuation of the property.

This percentage, at the rate mentioned, will be the amount of attorney's fees which I have earned since 1891, when I commenced to render services in the matter of the said partition, together with my associate, now deceased, Mr. Yeaza, as well as such fees as may accrue up to the date of the final approval of the partition.

I ought to say that the percentage I propose is what I deem current and normal; but it is understood that the fixing of the percentage by me is not definite or final, but is subordinated to your judgment and that of the co-heirs; that is to say, if you desire to change or reduce the rate, I will take pleasure in accepting and will consider myself fully remunerated by such rate as you and your co-heirs may indicate, even if it go to the last limit.

93 Please to make this statement to all the interested parties in the estate, and assure them that I say these things in a spirit of good will and sincerity.

Always at your orders, I am

Your Affectionate Friend,

JOSE MORENO LACALLE.

Number five hundred and eighty-four:—In Manila, this twenty-sixth day of October, 1897, before me, Jose Engracio Monroy y Torres, a Notary Public and for the District of this City, personally appeared Jose Moreno Lacalle, 45 years of age, married, an attorney at law and professor of the University of Manila, a resident of this City, with personal cedula of the fourth class number 803, issued on the 22nd of December, last year, and having assured me that he had, as in my judgment he has, the necessary legal capacity to execute this instrument, freely and of his own will stated that he conferred ample and especial power and as sufficient as may be necessary upon Don Roman Valez Angeles, of age, an attorney at law, and a resident of the town of Bacolor, of the province of Pampanga, to, in behalf of him, the said Lacalle, collect and receive any and all amounts due him for fees from any person or persons whatsoever, giving the necessary receipts therefor.—That he also confers upon Felix Galura, Procurator of the Court of First Instance of the Province of Pampanga, and to the Procurators of this City, Jose Crispulo Reyes, Eugenio Purón, Vicente Socorro, Venancio Ruiz, Placido Canas Buenaventura, Ceferino Revilla, Geronimo José Vicente Santos, José Gervacio Garcia, and Roman Valazco ample and complete power to represent him in all the Courts and before all the authorities of this territory in civil or criminal actions of voluntary jurisdiction, administrative or of whatsoever other nature, to which he may be a party, and for this purpose to attend any acts of conciliation or verbal actions, to file complaints, answers, and all pleadings whatsoever, to introduce the testimony of witnesses, documents, and all other proof; to ask for and obtain citations, summonses, writs of replevin, writs of attachment and levies, and sales under execution, to

95 impeach witnesses; to accept service of all orders and judgments, abiding by those which may be favorable and appealing from those which they may consider unfavorable, prosecuting such remedies as may be proper to have the same set aside or reversed; to withdraw appeals whenever they deem it expedient, prosecuting every action to a final determination and generally to do all that the grantor of this power would do himself in the premises if present, with full power of substitution and revocation, without any limitations whatsoever, promising hereby to ratify and confirm all that his said attorneys may do under and by virtue of this power. So said the grantor in the presence of the witnesses Mariano de Leon y Francisco, graduate candidate for the office of Procurator and Tomas Diaz Inocencio, scrivener, residents of this City. The parties having been duly informed of the right which they have to read this instrument themselves, I proceeded to read the same to them, the contents of which they ratified, signing these presents. I certify as to the identity, occupation and residence of all the parties to this instrument.—Jose Moreno Lacalle.—Mariano de Leon.—Tomas Diaz.—(Signed) Jose Engracio Monroy (Rubric), Notary's Seal.—On the same date a first copy of the foregoing instrument was issued

by me on a sheet of stamped paper, numbered 38,484. Monroy.—
 The foregoing is a true copy of the original appearing on my protocol
 under number 584, to which I certify. And at the request of the
 grantor of this instrument, I issue this second copy on this sheet of
 stamped paper, number 37,876, and in witness thereof I hereunto
 set my hand, after making the necessary entry upon the
 96 original instrument this ninth day of November, eighteen
 ninety-seven, to all of which I certify. Notary's Seal.—J.
 Engracio Monroy.—Rubric.

Bar Association of Manila.

Series 10. No. 8.

The power of Attorney number 584, executed by Jose Moreno
 Lacalle in this City of Manila, before the notary, Jose Engracio
 Monroy on the 26th of October, 1897, in favor of the Procurator
 Jose Crispulo Reyes and others, is sufficient to represent the former
 in the act of conciliation and the corresponding civil action sought
 to be instituted against Don Francisco Enriquez, his wife, and other
 heirs interested in the estate of Antonio Enriquez, deceased, to re-
 cover certain attorney's fees due the said Jose Moreno Lacalle.

Manila, March 10th, 1898.

BALDOMERO DE HAZAÑAS,

Attorney at Law.

Revenue stamp, 10 cents.

The heirs of Antonio Enriquez y Sequera and Ciriaca Villa-
 nueva.—1896.—To twenty-seven consultations with the heir, Rafael
 Enriquez, three with Francisco Enriquez, and preparation of the
 proposed agreement as to the method to be followed in the partition
 of the estate, and subsequently embodied in a public instrument
 executed on the 25th of August of the said year, and the proposed
 additional instrument thereto.....1,000.—Nine consulta-
 tions with Don Rafael and two with him, Don Francisco and Don
 Antonio on matters relating to the partition.....200.—
 Consultation with the same parties with reference to the extension
 of the time for the examination of the accounts and prepara-
 97 tion of the minutes of the meeting held for that purpose
\$30.—1897.—Id. id. for the further extension and
 drafting of the minutes of the meeting.....\$30.—1897.—Id.
 id.....\$30.—To sixty-three consultations with the said
 heirs, and for personal attendance at the meetings held on the third
 and the sixteenth of August, the twenty-third of October, third and
 thirteenth of November, and third of December, 1897, for the pur-
 pose of discussing the objections made to the accounts of the execu-
 tor and the approval of the same, preparation of the inventory and
 other matters of interest to the estate; preparation of the minutes of
 these meetings and of the proposed instrument approving the ac-
 count and the inventory as prepared; preparation of the bill of sale
 of the property known as the "Old Theater" and examination of the

accounts of the executor, and the vouchers and papers presented by him in connection therewith. . . . \$5,000.—Total. . . . \$6,290.—This bill amounts to six thousand two hundred and ninety dollars.—Manila, March 9th, 1898.—Jose Moreno Lacalle. Rubric.—To the Court.—Jose Crispulo Reyes, the Procurator of the Courts of First Instance of this City, in behalf of the Most Illustrious Señor Don Jose Moreno Lacalle, and by virtue of the power of attorney hereto attached, appears before this Court and represents: That the estate of Antonio Enriquez y Sequera, deceased, of which Francisco Enriquez y Villanueva, residing at number 14 Calle San Sebastian, is the executor, is indebted to my principal in the sum of six thousand two hundred and ninety dollars, due him as attorney's fees for services rendered by him in connection with the partition of the estate of Antonio Enriquez y Sequera and his wife Ciriaca Villanueva, deceased, and other services therein set forth. All efforts to collect the said amount having failed, my principal is compelled to

98 apply to the Courts of Justice of the purpose of recovering the same and for the purpose of the summary action to be instituted in conformity with the provisions of section 1414 of the Code of Civil Procedure, I pray the Court that upon consideration of this petition, to which a copy of the power of attorney is attached, an order to be issued to the said Francisco Enriquez y Villanueva, as executor of the estate of his deceased father, directing him to state under oath whether or not the said estate is indebted to my principal in the sum of six thousand two hundred and ninety dollars as attorney's fees. Manila, December 29th, 1898. Alfredo Chicote, Attorney at Law.—Jose Crispulo Reyes.—Rubric. Fees. \$2.76.—Acceptance of Power of Attorney.—\$.50.—Court of First Instance of Binondo, December 31, 1898.—Order. Upon consideration of the foregoing petition, and the documents thereto attached, the same was duly filed by direction of the Court, to which I certify.—Enrique Garcia de Lara.—Rubric.—Francisco B. Cruz. Rubric.—Distribution number 1382.—Turn 25.—Assigned to the Court of First Instance of Intramuros.—Manila, December 31st, 1898.—Approved, Garcia de Lara.—Clerk in charge assignment of cases.—Francisco Cruz.—Rubrics.—Olves.—Reyes.—Medina.—Court of First Instance of Intramuros. December 31, 1898.—Order.—Let this case be assigned to the Clerk of this Court next in turn, and this done, submit to the Court. Done by the Court, to which I certify.—Astray Fernis.—Francisco Cruz.—Rubrics.—Notification. In Manila, this 31st day of December, 1898, the foregoing order was notified to, and served upon the Procurator Jose C. Reyes, who signed with me. F. Cruz.—Assigned to the office of the undersigned with the intervention of the Court.—Approved Astray Fernis.—Francisco R. Cruz.—Court of First Instance of Intramuros, January, 1899.—Order. Upon consideration of the foregoing petition presented by the Procurator, Jose Crispulo Reyes, in the capacity therein stated, let summons be issued out of this

99 Court to Francisco Enriquez y Villanueva, as executor of the estate of his deceased father, directing him to make answer under oath to the aforesaid petition, for which purpose the hour of

ten o'clock A. M. of Thursday, the fifth instant, is fixed. Done by the Court, to which I certify.—Astray Fernes. Before me, Francisco C. Reyes.—Rubric.—Notification.—In Santa Cruz, this second day of January, 1899, notice of the foregoing order was served upon the Procurator, Jose C. Reyes, who upon the receipt of a copy thereof, signed with me, to which I certify.—Jose C. Reyes. Fees \$.50. R. Cruz.—Citation. In San Sebastian, this third day of January, eighteen ninety-nine, I served upon Don Francisco Enriquez notice of the foregoing order, directing him to appear for the purpose therein stated, and upon a receipt of a copy of the summons, he signed with me, to which I certify.—Francisco Enriquez.—R. Cruz.—Rubric.—To the Court of First Instance of Intramuros.—Jose Crispulo Reyes, Solicitor in behalf of Jose Moreno Lacalle, in the preliminary proceedings brought by him against the estate of Antonio Enriquez y Sequera, deceased, appears and represents: That Don Francisco Enriquez has been cited to appear in this Court to-morrow as executor of the estate of his deceased father for the purpose of testifying under oath as to the existence of an indebtedness, the amount of which is sought to be recovered, and the undersigned having been informed that the said Francisco Enriquez is under arrest in his own house by direction of the American authorities, and that for this reason he will not be able to appear in Court, it is respectfully requested that the Court adjourn to the residence of the said Francisco Enriquez for the purpose of taking his testimony.—Manila, January 4th, 1899. Alfredo Chicote, Attorney at

100 Law.—Jose C. Reyes, Fees. \$1.00. Rubric.—Note: The foregoing petition was filed by the Procurator, José Crispulo Reyes this fourth day of January, 1899, at seven o'clock. P. M., R. Cruz.—Court of First Instance of Intramuros, January 5th, 1899,—Order. Let the foregoing petition be attached to the record to which it belongs, the petition is granted and the Court will adjourn to the private residence of Don Francisco Enriquez at the hour set for the taking of his deposition. Done by the Court. Astray Fernes.—Before me, Francisco R. Cruz.—Notification. In Manila, this fifth day of January, 1899, notice of the above order was served upon the procurator, José Crispulo Reyes, who upon a receipt of a copy thereof of signed with me, to which I certify. Jose C. Reyes. Fees \$.50.—R. Cruz. Rubric.—Testimony of Francisco Enriquez. At fourteen San Sebastian Street, the residence of Francisco Enriquez y Villanueva, this fifth day of January, 1899, the Court convened pursuant to adjournment, and the said Francisco Enriquez, of age, married, a freeholder, residing in the said house as above stated, appeared and having been first duly sworn in accordance with the law, promised to tell the truth as to all matters within his knowledge concerning this case. Having been required to state in his capacity as executor and administrator of the estate of his deceased father Antonio Enriquez y Sequera, whether or not the said estate was indebted to José Moreno Lacalle in the sum of six thousand two hundred and ninety-dollars, for professional services rendered by him as attorney, he answered, that it is true the estate is indebted to the said Moreno Lacalle in the aforesaid sum

for services rendered by the latter for several years in connection with the said estate, for which he has not been paid. After
 101 reading the foregoing, he signed hereon immediately after the Judge, to which I certify. Astray Fernes.—Francisco Enriquez.—Jose Moreno.—Court of First Instance of Intramuros, this fifth day of January, 1899.—Order. Let these proceedings be referred to the Procurator Jose Crispulo Reyes for the exercise of his rights. Done by the Court.—Astray Fernes. Before me, Francisco R. Cruz.—In Santa Cruz, this tenth day of January, 1899, notice of the foregoing order was served upon the Procurator Reyes, and upon the receipt of a copy thereof he signed with me, to which I certify.—Jose C. Reyes. \$.50—R. Cruz.—Proceedings relating to delivery. The foregoing proceedings were delivered by me to the Procurator, Reyes, under receipt setting forth the number of pages contained in the record, which receipt was signed by him this tenth day of January, 1899, to which I certify.—Jose C. Reyes. Fees \$1.00. R. Cruz.

To the Court of First Instance of the District of Intramuros. Jose Crispulo Reyes, solicitor, in behalf of Jose Moreno Lacalle, in the preliminary proceedings of execution instituted by me in this Court against the estate of Antonio Enriquez y Sequera, deceased, appears and represents: That the executor and administrator of the said estate, Francisco Enriquez y Villanueva, has admitted under oath before this Court that the claim sought to be enforced is a true one, thereby giving this party a right to bring the corresponding executive or summary action, whereupon he proceeds to file this, his complaint, based upon the following grounds. Facts.—During the years 1896, 1897, and 1898, Don Jose Moreno Lacalle, whom I represent rendered certain professional services at the request of the executor and
 heirs of Antonio Enriquez y Sequera, deceased, in connection
 102 with the partition of the said deceased's estate, and that of his deceased wife, Ciriaca Villanueva, and other matters pertaining to the said estates, then pending. 2. That the value of these services is six thousand two hundred and ninety dollars, and the executor and administrator of the estate in question, to whom the bill was duly presented for payment, having failed to pay the same, these preliminary proceedings preparatory to execution, were instituted by me in behalf of the said Moreno Lacalle, wherein the said executor acknowledged the truth of the claim under oath. Law.—1. The acknowledgment of the debt before a competent court carries with it the right to have execution issued under the provisions of section 1411 of the Code of Civil Procedure, and a sum of money being the subject of this claim, the same exceeding 1,000 pesetas, and the time for payment having expired, it would appear that all the requisites which are necessary under the law for the issuance of execution are present in this case. 2. When the debtor is in default he is liable to the creditor for damages, and when the obligation is for the payment of a sum of money, the indemnity consists in the payment of the legal interest at the rate of six per cent. per annum upon the amount due from the date of the filing of the complaint, in accordance with the provisions of section- 1100, 1101,

1108 of the Civil Code. For the foregoing reasons, and in the exercise of the right of executive action which my principal has, promising to pay all just and lawful sums which may be necessary and which the law evidently through typographical error terms damages, I pray the Court that, upon consideration of this petition, the copy thereof hereto attached, the power of attorney and the statement of fees, the basis of this claim, it be ordered that execution issue forthwith against the property and income of the estate of

Antonio Enriquez y Sequera in a sum sufficient to satisfy
103 the said amount of six thousand two hundred and ninety dollars and legal interest thereon at the rate of six per cent. per annum from the date of the filing of the complaint until the complete satisfaction of the debt and costs of these proceedings, and that by virtue thereof Don Francisco Enriquez y Villanueva be required to pay forthwith the said sum of six thousand two hundred and ninety dollars, or in default thereof that so much of the property of the estate in question be levied upon as may be necessary, in the manner provided by law, and the same advertised for sale upon notice to the said Francisco Enriquez. Manila, January 12, 1899. Gonzalo Cespedes. Rubric.—Jose C. Reyes. Fees. \$1.76. Plain copy, six pages, \$2.28. Return of record \$.50.—Rubric. In the Court of First Instance of Intramuros, this thirteenth day of January, 1899. Order. The record having been returned together with the foregoing petition, let the same be submitted for decision. Done by the Court, to which I certify.—Astray Fernes.—Before me, Francisco R. Cruz.—Rubric.—In Santa Cruz this fourteenth day of January, 1899, the foregoing order was served upon the Procurator Jose Crispulo Reyes, who upon receipt of a copy thereof, signed the same, to which I certify. Jose C. Reyes. Fees \$.50. R. Cruz.

In the Court of First Instance of Intramuros, this 16th day of January, 1899.—Order.—It appearing that on the 31st of December last, the procurator, Jose Crispulo Reyes in behalf of Jose Moreno Lacalle, as shown by the power of attorney on file, presented a petition to this Court, as preparatory to the execution proceedings, requesting that Don Francisco Enriquez y Villanueva, in his capacity as executor and administrator of the estate of his deceased father, Antonio Enriquez, be summoned to appear before the Court and

state under oath whether or not the said estate was indebted
104 to the said Jose Moreno Lacalle for the sum of six thousand two hundred and ninety dollars for professional services rendered by him as shown in attached bill. It appearing further that, the case having been assigned to this Court, Don Francisco Enriquez, having been duly summoned appeared and acknowledged under oath that the said estate was indebted to the said Moreno Lacalle in the aforesaid sum for services rendered by the latter for several years in connection with the said estate, for which services he had not been paid. It appearing further that the proceedings having been referred to the Procurator Mr. Reyes, he the said Reyes, in a petition filed by him prayed this Court that for the reasons therein stated and upon consideration of his complaint, execution issue against the property and income of the estate of the said Antonio

Enriquez y Sequera, deceased, in a sum sufficient to satisfy the said amount of six thousand two hundred and ninety dollars and the legal interest thereon at the rate of six per cent. per annum from the date of filing the complaint with the amount due together with the costs of these proceedings be fully paid, and that for this purpose Francisco Enriquez y Villanueva be called upon to pay the said sum, and in case of failure so to do, that the property of the estate be levied upon in the manner provided by law and sold at public auction. And it appearing further that the complaint is drawn up in the precise terms prescribed by section 1421 of the Code of Civil Procedure, now therefore, considering that the judicial confession carries with it the right to execution when the action is for the recovery of a sum of money, as in this case, and the time for the payment thereof has expired, and in view of the provisions of sections 1411 and 1414 and 1417 of the Code of Civil Procedure, the Honorable Antonio Astray y Fernandez, Judge of the Court of First Instance of this District, before me, the clerk, said, that the foregoing complaint, together with the copy thereof, thereto
 105 attached, having been duly filed, let the said Francisco Enriquez, as executor of the estate of his deceased Father, Antonio Enriquez y Sequera, be required to pay the said sum of six thousand two hundred and ninety dollars, which he owes to Jose Moreno Lacalle, together with the legal interest thereon from the time he was in default, and the costs of these proceedings, and in case he shall fail to pay forthwith, so much of the property of the estate shall be levied upon as may be necessary to meet his liabilities under this judgment, and let the necessary orders be accordingly given to the Officers of this Court, advertising the property for sale upon notice to the judgment debtor, to whom a copy of the complaint and of the documents thereto attached shall be delivered, and let the Procurator, Mr. Reyes be required to pay the value of the paper which he should have used in these proceedings. Done by the Court. Antonio Astray Fernes.—Before me, Francisco R. Cruz.—Rubric.—Notification. In Santa Cruz, this sixteenth day of January, 1899, notice of the foregoing order was served upon the Procurator, Mr. Reyes, by delivering to him a copy, to which I certify.—Jose C. Reyes. Fees. \$ 50.—R. Cruz. Rubric.—Note: On this sixteenth day of January, 1899, the execution referred to in the foregoing order was issued, to which I certify.—R. Cruz.

Antonio Astray y Fernandez, Judge of the Court of First Instance of the District of Intramuros. Any of the officers of this Court, assisted by the Clerk, shall forthwith make demand upon Francisco Enriquez y Villanueva, as executor of Antonio Enriquez y Sequera, deceased, for the payment of the sum of six thousand, two hundred and ninety dollars, due to Jose Moreno Lacalle, together with the legal interest thereon since he has been in default, and the
 106 costs which have been or may be incurred, and should he fail to pay, so much of his property shall be levied upon as may be necessary to satisfy his liability under the judgment, in the manner prescribed in section 1429 of the Code of Civil Procedure, pursuant to the order entered by me in the action to which these

presents relate. Manila, January 16th, 1899.—Antonio Astray Fernes. Before me, Francisco R. Cruz.—Rubric.

The officer of this Court, accompanied by me, having called at the residence of Francisco Enriquez y Villanueva, 14 Calle San Sebastian, this thirtieth day of January, 1899, and having the said Francisco Enriquez y Villanueva before him, demand was made upon him as testamentary executor of his deceased father, Antonio Enriquez y Sequera for the payment of the sum of six thousand two hundred and ninety dollars, due to Jose Moreno Lacalle, together with the legal interest thereon since he has been in default and such costs as have been or may be incurred in this proceeding until the full payment thereof, whereupon, the said Francisco Enriquez stated that he was unable to pay the amount claimed because he had no money with which to do so, and indicated the following described property belonging to the estate which could be levied upon: A piece of property on Calle Dasmariñas of the District of Binondo of this City, known as the "Old Theater," with a superficial area of 1567 square meters and seventy centimeters, bounded in front by the said street, on the right by Calle Ugalde, on the left by Calle Marquina and in back by Calle Poblete. The building consists of two sections and two single buildings at the ends, the appraised value of which is seventeen thousand and ninety-two dollars and fifty cents. And the said Officer, having levied upon the said property, these proceedings were terminated, the said Officer signing the same, to which I certify.—Simon de la Rosa.—Francisco Enriquez.—P. S. Moreno. Court of First Instance of Intramuros, this thirtieth day of January, 1899.—Order.—Let an order be issued in duplicate to the Registrar of Property of the Northern District of this City, directing him to make an entry in his register as to the levy upon the property, a description of which appears in the corresponding proceedings, the amount of the costs being fixed at four hundred pesos. Done by the Court, to which I certify. Astray Fernes.—Before me, P. S. Jose Moreno.—On the thirtieth of January, 1899, the aforesaid order was issued in duplicate, to which I certify.—P. S. Moreno.

Don Antonio Astray Fernandez, Judge of the Court of First Instance of the District of Intramuros.—To the Registrar of Property of the Northern District. In the executive action instituted by Mr. Jose Moreno Lacalle, married, of age, and an attorney at law, and a resident of Malaga, represented by his solicitor, Jose Crispulo Reyes, against the estate of Antonio Enriquez y Sequera, deceased, of which Francisco Enriquez y Villanueva, married, of age, freeholder, residing at No. fourteen San Sebastian street, is executor, to recover a certain sum of money for services rendered, an order was entered on the sixteenth instant directing that execution issue against the said Francisco Enriquez, as executor of the said estate for the sum of six thousand two hundred and ninety dollars which he owes, together with the legal interest thereon since he has been in default, and such costs as have been or may be incurred, and due demand for payment having been made upon the said Francisco

Enriquez, he stated that he had no money with which to satisfy the debt, and designated the following described property upon which levy could be made: A piece of property on Calle Dasmariñas 108 of the District of Binondo of this City, known as the "Old Theater," with a superficial area of 1537 square meters and seventy centimeters, bounded in front by the said street, on the right by Calle Ugalde, on the left by Calle Marquina and in back by Calle Poblete. The building consists of two sections and two single buildings at the ends, the appraised value of which is seventeen thousand and ninety-two dollars and fifteen cents. The said property was levied upon and the following order was this day entered with reference thereto: "Let an order be issued in duplicate to the Registrar of Property of the Northern District of this City, directing him to make an entry in his register as to the levy upon the property, a description of which appears in the corresponding proceedings, the amount of the costs being fixed at four hundred pesos. Done by the Court, to which I certify. Astray Fernes.—Before me, P. S. Jose Moreno." And in order that you may make the said entry, I issue the foregoing in duplicate for your information. In Manila, this thirtieth day of January, 1899. Antonio Astray Fernes.—Before me, P. S. Jose Moreno.—The foregoing document was filed in this Office this day, at ten o'clock, as shown by entry number 83, page 26 of volume 7 of the Diary, and the entry as to the attachment and levy referred to therein is suspended for the reason that the property attached is not recorded in this Office in favor of the debtor estate. A memorandum entry has been made as to the suspension of the levy at page 18, volume 57, of the Archives of the Registry of Property for the Northern District of this City, at 17 of the Binondo Section, Property No. 940, annotation, letter "B." Manila, January thirtieth, 1899.—Mateo Camps.—Rubric.—Seal: Registry of Property for the Northern District of the City of Manila.

In the Court of First Instance of the District of Intramuros.—
 109 Jose C. Reyes, Solicitor, in behalf of Jose Moreno Lacalle, in the executive action instituted in this Court by him against the estate of Antonio Enriquez y Sequera, deceased, appears and represents: That execution having issued out of this Court against the executor of the said estate for the amount of the judgment, levy was made and an order was issued, directing that an entry be made accordingly, to the Registrar of Property for the Northern District of this City, which order is hereto attached with the indorsement of the Registrar; and that in accordance with the law the executor Francisco Enriquez y Villanueva was notified that the property would be sold at public auction to which he made no opposition, wherefore the undersigned, availing himself of the provisions of section 1414 of the Code of Civil Procedure, prays the Court that upon consideration of this petition and the documents thereto attached an order be entered declaring the said Francisco Enriquez y Villanueva, as executor of the debtor estate, in default, and directing that the case be proceeded with in the

manner provided by law and that final judgment be entered. Manila, July 3, 1899.—Antonio Sanz.—Jose C. Reyes. Fees. \$1.76.

Court of First Instance of Intramuros, July 6, 1899.—Order. The foregoing petition, and attached copy and order, having been filed, let the matter be reported to the Court, together with the antecedents of the case. Done by the Court, to which I certify.—Jose Basa.—Francisco R. Cruz.—Rubric.—Notification. In Manila, this sixth day of July, 1899, the foregoing order was read to the Solicitor, Jose Crispulo Reyes, and a copy thereof delivered to him, and having been informed thereof, he signed with me, to which I certify. Jose C. Reyes. Fees. \$.50.—R. Cruz. Rubric.

110 Order. Without prejudice acting upon the foregoing petition later, the Actuary will make his report and the Solicitor, Mr. Reyes, will be informed of the indorsement of the Registrar appearing immediately after the order. Done by the Court. Basa. Before me, Francisco R. Cruz. Rubric. Notification. In Santa Cruz, this seventh day of July, 1899, the foregoing order was served upon the Solicitor Mr. Jose Crispulo Reyes and upon the receipt of a copy thereof, he signed with me.—Jose C. Reyes. Fees \$.50. R. Cruz. Rubric.

To the Court. In Compliance with the direction contained in the foregoing order, I have the honor to inform you that there is no record of any citation having been issued to the testamentary executor, of Antonio Enriquez as to the sale at public auction, he having been only required to pay the amount due, and being unable to do so, he pointed out the property referred to at page 20 of the record upon which levy could be made. Manila, July 10th, 1899.—Francisco R. Cruz. Rubric.—In the Court of First Instance of Intramuros, this tenth day of July, 1899. Order. In view of the foregoing report, let the testamentary executor of Antonio Enriquez be notified that the property will be sold at public auction, and the prayer contained in the petition at page 26 is hereby denied for the present. Done by the Court.—Basa. Before me, Francisco R. Cruz.—Notification.—On the tenth of July, 1899, the foregoing order was served upon the solicitor, Mr. Reyes, who was furnished with a literal copy thereof, he signing with me, to which I certify.—Reyes.—R. Cruz.—Rubric. In San Sabastian, house number 14, this 11th day of July, 1899, notice of the auction sale was served upon Francisco Enriquez y Villanueva, who upon receipt of said notice, with a copy of the complaint and documents attached
111 thereto, signed with me, to which I certify.

In the Court of First Instance of Intramuros. Jose C. Reyes, in behalf of Jose Moreno Lacalle, in the executive action instituted by him against the estate of Antonio Enriquez y Sequera for the recovery of attorney's fees, appears and represents: That on the 18th instant notice of the auction sale was served upon the judgment debtor and the latter, having made no objection to the execution, notwithstanding that the time allowed him for this purpose has

expired, I pray the Court that upon consideration of this petition an order be entered declaring the said Francisco Enriquez y Villanueva as executor of the debtor estate in default, and that after the necessary proceedings, judgment be entered. I further state that I have signed this petition, notwithstanding the recent abolishment of the office of Procurator, for the reason that the attorneys at law have not yet been authorized to practice, they being the ones who will hereafter assume our duties. I pray the Court to take this statement into consideration for what it may be worth. Manila, July 26th 1899.—Jose C. Reyes.—Court of First Instance of Intramuros, July 26th, 1899. Order.—Let the foregoing petition be attached to the record to which it belongs.—Basa.—Before me, Francisco R. Cruz.—Santa Cruz, July 27th, 1899, notice of the preceding order was served by me upon Jose Reyes who upon receipt of a copy thereof, signed with me, to which I certify.—Reyes.—Fee \$.50.—R. Cruz.—In the Court of First Instance of Intramuros, this 28th day of July, 1899.—Order. It appearing that attachment having been levied on the 30th of January, last, upon the property referred to on page — of the record of the testamentary proceedings of Antonio Enriquez, Don Francisco Enriquez, as executor under the will, was duly served with notice that the said property would be sold

112 at public auction and at the same time furnished with a copy of the complaint and attached documents. The unextendible period of three days from the service of said notice and papers having elapsed and the said executor having made no objection to the execution or entered an appearance in due form, the plaintiff asked that defendant be declared in default.—Under Section 1444 of the Code of Civil Procedure, when the judgment debtor allows the unextendible period of three days fixed by law, from the time he was served with notice of the proposed sale at public auction of the property attached, to elapse without entering an appearance, he may, on motion by the judgment creditor, be declared in default and the case be proceeded with without further notice to him except as provided by law, and without any intervention other than that of the judgment creditor. In view of the provisions of this section, the Hon. José Basa Enriquez, Judge of the Court of First Instance of this District, before me, the Clerk, said: Don Francisco Enriquez, as testamentary executor of Antonio Enriquez, deceased, is hereby declared in default, let the case follow its regular course without further notice to him, except as provided by law and let the case be set down for judgment upon notice to the judgment creditor only. Done by the Court, to which I certify.—José Basa.—Francisco R. Cruz.—Rubric.—Manila, July 28th, 1899, the foregoing order was served upon Jose Reyes, who upon receipt of a copy thereof, signed with me, to which I certify.—Jose C. Reyes.—R. Cruz.—In San Sebastian, this 2nd day of August, 1899, a copy of the foregoing order was served by me upon Francisco Enriquez as testamentary executor of Antonio Enriquez, to which I certify.—Francisco Enriquez.—R. Cruz.—In San Miguel, this 3rd day of August, 1899, I cited José Moreno Lacalle for judgment, and upon the receipt of a

copy of the citation he accepted service of the same and signed.—Jose Moreno Lacalle.—R. Cruz.

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Judgment.

In the City of Manila, this 8th day of August, 1899,—José Basa Enriquez, Judge of the Court of First Instance of Intramuros. In the summary or executive action for the recovery of a certain sum of money, instituted by José Moreno Lacalle, a resident of this City, married, of age, and attorney at law, represented by Attorney Gonzales Cespedes, against Francisco Enriquez, also of this City, of age, freeholder, as testamentary executor of Antonio Enriquez, deceased, it appears that plaintiff having requested that Don Francisco Enriquez y Villanueva, executor under the will of his deceased father, Antonio Enriquez, be summoned to appear in Court and state under oath whether the indebtedness of 6,290 dollars to Jose Moreno Lacalle for professional services, as shown in the bill, was true, the said Francisco Enriquez appeared and acknowledged that the estate which he represented was indebted to the said Moreno Lacalle in the aforesaid amount for professional services rendered by him in the course of several years, for which he had not been paid, whereupon plaintiff prayed for the reason set forth in his motion (page 14 of the record) that execution issue. It appears further that execution was issued (p. 16) and that the property described at page — was levied upon and notice served on the judgment debtor of the proposed sale of the same at public auction. The period of three days from the service of said notice, fixed by law, having elapsed and the judgment debtor having failed to appear in the case, on motion by the plaintiff, he was declared in default and it was directed that the action be proceeded with in the regular way and the case set for judgment upon notice to the judgment creditor only. It also appears that in the prosecution and trial of this case the provisions of the law have been complied with and that no none of the circumstances of section 1449 of the Code of Civil Procedure is present. Considering that under section 1411 of the Code of Civil Procedure execution necessarily follows the judicial acknowledgment of the debt provided the same has become due as in the case at bar. Considering further, that execution having issued in accordance with the above-cited sections the judgment debtor made no objection thereto within the time fixed by law, such execution should be proceeded with. In view of the provisions of said sections, and sections 1443 and 1444 of the same Code, it is the judgment of this Court that the said execution be proceeded with, the property heretofore attached, sold at public auction and the entire proceeds applied to the payment of the judgment in favor of the said José Moreno Lacalle, for the sum of six thousand two hundred and ninety dollars, exclusive of legal interest, since he has been in default, and such costs as have been or may be incurred. So ordered.—Jose Basa. Publication. The foregoing judgment was read and made public by the Hon. Jose Basa Enriquez, Judge of the Court of First Instance of Intramuros, in open Court, this 8th day of August, 1899, to which I certify.—R. Cruz.—Notification.—In

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San Miguel, this 8th day of August, 1899, copy of the foregoing judgment was served by me upon José Moreno Lacalle, who signed with me.—Jose Moreno Lacalle.—Rubric.—R. Cruz.

To the Court of First Instance of Intramuros.—Now comes Jose Moreno Lacalle, a licensed attorney, in the summary or executive action by him instituted against the estate of Antonio Enriquez, and represents: That although the judgment debtor in this case has been declared in default, to better safeguard his rights in the premises, the judgment directing that the property be sold at
 115 public auction should be served upon the said executor, personally, and he accordingly requests that an order be entered to this effect. Having been unable to find stamped paper of the required class at the proper offices, your petitioner also requests that he be permitted to use the paper on which this petition is written, without prejudice to paying therefor later.—Manila, August 25, 1899.—Jose Moreno Lacalle.—Court of First Instance of Intramuros.—August 25th, 1899.—Order. Let the foregoing petition be attached to the record to which it belongs. The petition is granted and let notice of the judgment wherein it was directed that the property be sold under the execution be served upon the said Francisco Enriquez personally as executor and administrator of the estate of Antonio Enriquez. Done by the Court, to which I certify.—Basa.—Francisco R. Cruz.—Notification: In San Miguel, this 25th day of August, 1899, copy of the foregoing order was served upon Jose Moreno Lacalle, to which I certify.—Jose Moreno Lacalle.—R. Cruz.—Rubric. Notification.—This 28th day of August, 1899, copy of the above judgment was served upon Francisco Enriquez as executor and administrator of the estate of Antonio Enriquez, and having received the same, he signed with me, to which I certify. F. Enriquez. R. Cruz.

To the Court of First Instance of Intramuros.—Now comes Jose Moreno Lacalle, a practicing attorney, as plaintiff in the executive action instituted in his behalf against the estate of Antonio Enriquez y Sequera, deceased, and represents: That at his request, and on the 28th of August, last, notice was served upon the execution debtor of the judgment rendered in this case directing that the property be sold at public auction. The period of five days allowed
 116 by law for taking an appeal expired on the second instant and I have been informed by the Clerk's Office that no notice of appeal has been filed. The judgment has therefore become final and should be so declared in accordance with section 1463 of the Code of Civil Procedure. The property of the debtor attached in this action being real, and order should issue (Section 1471) to the Registrar of Property of the Northern District directing him to send to this Court a certificate showing the liens and incumbrances, if any, which exist upon the property thus attached, or whether the same is free of any such liens or incumbrances. The judgment debtor should be also required to deliver to the Clerk of this Court within six days the title deeds of the said property. Wherefore, I

pray the Court to enter an order declaring that the judgment has been consented to and that such other proceedings be had as may be proper. I further state that the office where the stamped paper is sold, being closed at the time, ordinary paper had to be used for this petition, without prejudice to making the necessary payment later. Manila, September 5th, 1899.—Jose Moreno Lacalle.—Note. This 6th day of September, 1899, the foregoing petition was filed by Jose Moreno Lacalle, to which I certify.—R. Cruz.—Court of First Instance of Intramuros, this 5th day of September, 1899.—Order.—Basa, Judge. Upon consideration of the foregoing petition, let the same be attached to the record; the judgment is declared final; let an order be issued to the Registrar of Property of the Northern District of this City, directing him to send to this Court a certificate showing the liens and incumbrances, if any, which may exist upon the property attached, or that the same is free from such liens or incumbrances, and let the judgment debtor be required to deliver to the Clerk of this Court, within six days, the title deeds of the property levied upon.—So Ordered.—Basa.—Before me, Francisco R. Cruz.—Notification. In San Miguel, this fifth day of September, 1899, notice of the foregoing order was served upon Jose Moreno Lacalle, and upon receipt of a copy thereof, signed with me, to which I certify.—Jose Moreno Lacalle.—R. Cruz.—Notification. In Quiapo, September 6, 1899, notice of the foregoing order was served upon Francisco Enriquez, who being informed of the contents, signed with me, to which I certify.—F. Enriquez.—R. Cruz. Note. In compliance with the foregoing order, an order was issued to the Registrar of Property for the Northern District, this sixth day of September, 1899, on stamped paper, to which I certify.—R. Cruz.

To the Court of First Instance of Intramuros.—Don José Moreno Lacalle, in the executive action instituted by him against the estate of Antonio Enriquez, states: That by an order made and entered on the 5th instant the executor of the said estate was required to present the title deeds of the property attached; that he has been informed that the said documents are in the hands of the Notary, Don Enrique Barrera to whom the parties delivered the same when they decided to dispose of the said property. Wherefore, your petitioner prays that the said notary be ordered to deliver said deeds to the actuary if he still has them. Manila, September 12, 1899.—Jose Moreno Lacalle.—Rubric.—Court of First Instance of Intramuros, September 11th, 1899.—Order. Let the foregoing petition be attached to the record and an order issue as requested to the Notary Public Enrique Barrera. Done by the Court—Basa—Before me, Franco, R. Cruz.—Notification. Manila, September 11th, 1899, notice of the foregoing order was served upon Jose Moreno Lacalle, who signed with me—Jose Moreno Lacalle R. Cruz. —Rubric.

Binondo, September 14th, 1899.—The foregoing order was served upon Don Enrique Barrera, who being informed of the same, said that the title deeds referred to in Attorney Lacalle's petition were delivered by him to José de la Rosa, the At-

torney in Fact of the *Junta Administradora de Obras Pias*, and signed with me, to which I certify.—Enrique Barrera y Caldes.—R. Cruz.—Court of First Instance of Intramuros, September 15th, 1899. *Order*.—Let Don Jose Moreno Lacalle be informed of the reply given by the Notary Don Enrique Barrera y Caldes so that he may exercise his right in the premises. Done by the Court, to which I certify—Basa. Before me. Franco R. Cruz. Notification.—Manila, September 15, 1899. The foregoing order was served upon Jose Moreno Lacalle, who after being informed of the answer made by the notary signed with me, to which I certify.—José Moreno Lacalle—R. Cruz.—Court of First Instance of Intramuros, September 23rd, 1899. *Order*.—Let the order as complied with by the Registrar of Property for the Northern District of this City be attached to the record and Don José Moreno Lacalle duly informed of its contents so that he may exercise whatever rights he might have.—Basa.—Before me. Franco. R. Cruz.—Notification.—In San Miguel, this 23rd day of September, 1899. Notice of the foregoing order was served upon Don Jose Moreno Lacalle, who was duly informed of the action taken by the Registrar of Property for the Northern District of this City, whereupon Marcos Bautista signed with me, at his request, he being ill, to which I certify—Marcos Bautista.—R. Cruz.

Jose Basa Enriquez, Judge of the Court of First Instance of Intramuros,—To the Registrar of Property of the Northern District of this City: Greeting, In the executive action now pending in this Court between José Moreno Lacalle and the estate of Antonio Enriquez, and order was entered on the fifth instant directing you to issue and send to this Court a certificate showing what
119 liens or incumbrances, if any, exist upon the property known as the Old Theater, consisting of a two-section structure, adjoining building, and the lot upon which they stand, comprising a superficial area of 1577 square meters and 70 centimeters on Calle Dasmariñas, in the District of Binondo, bounded on the front by the said street, on the right by Calle Ugalde, on the left by Calle Marquina and in back by Calle Poblete, or whether the same is free from all liens and encumbrances, and has been for the past thirty years.—Manila, September 6th, 1899.—Jose Basa. Before me, Franco. R. Cruz.

I, Simplicio del Rosario, Registrar of Property for the Northern District of the City of Manila, do hereby certify: That in compliance with the foregoing order, wherein I am directed to issue a certificate showing whether any mortgage, lien or incumbrance exists upon the property known as the "Old Theater," a two-section structure, the metes and bounds of which are set out in the said order, I have examined the books of the old and new registers; that although on page 192, volume 52, for the year 1879, of the now abolished Registry of Mortgages of this City, there is recorded a piece of property known as the "Old Theater," its location and boundaries are different from those set out in the order of the Court,

nothing being said about the superficial area of the same, and it appears that the said property is situated on a street of the same name as the theater, bounded on the front by the houses of Pascual Hugo, Catalino Vilafranca and Juan Cabarraz, a street and a plaza being between the houses and the property; on the right by the house of Ignacio Ponce de Leon; on the left by a lot belonging to the estate of Mariano Escalante, and in back by the house of Rosaura Cortez and property belonging to the estate of Escalante. The said property,

120 according to the public instrument executed in this City on the 23rd of April, 1879, before the notary public, Francisco Hernandez y Ferjarnes, which was recorded on the 24th of the same month, was mortgaged by Don Antonio Enriquez to the juridical entity known as La Junta Administrador de Obras Pias to secure a loan of ten thousand dollars at six per cent. interest per annum. And there being no record of any other mortgage, lien or incumbrance upon the property in question, I issue these presents in Manila, this fourteenth day of September, 1899.—Simplicio del Rosario. Fees \$11.10. Secs. 11 and 14 of the Tariff. (Seal.)

To the Court of First Instance of Intramuros.—Jose Moreno Lacalle, a practicing attorney, and plaintiff in the executive action by him instituted against the estate of Antonio Enriquez y Sequera, appears and represents: That he has been informed by the Clerk's Office that the notary public Enrique Barrera y Caldes has stated that the title deeds of the property levied upon in this case are in possession of José de la Rosa, and it being necessary to interest that the said title deeds be in the Office of the Clerk of this Court for the purposes of section 1471 *et seq.* of the Code of Civil Procedure, he respectfully requests the Court to enter an order directing the said Jose de la Rosa to surrender the said title deeds within six days. The office in which the stamped paper is sold being closed, this petition is written on ordinary paper, without prejudice to substituting paper of the proper denomination. Manila, September 23rd, 1899.—José Moreno Lacalle.

Court of First Instance of Intramuros.—September 26, 1899, Order. Let the foregoing petition be attached to the record 121 to which it pertains. The same is hereby granted, and let an order issue to the said Jose de la Rosa, as requested. The statement as to the stamped paper is noted. Done by the Court, to which I certify, Basa. Before me, Franco. R. Cruz.—Notification.—In Manila, this 26th day of September, 1899, Don Jose Moreno Lacalle was duly informed of the foregoing order, and upon receipt of a copy thereof, Marcos Bautista accepted service of the same, at Mr. Lacalle's request, he being sick, to which I certify.—Marcos Bautista.—R. Cruz. Notification.—In Manila, this 29th day of September, 1899, Don Jose de la Rosa was duly informed of the foregoing order, and required by me to, within six days, surrender to the Clerk's Office the title deeds of the property attached in this action, whereupon he stated that he did not have in his possession the title deeds of the property belonging to Antonio Enriquez, known

as the Old Theater of Binondo, but that the same were in the hands of the Junta Administradora de Obras Pías, who had delivered the same to its attorney, Francisco Ortigas for the purpose of bringing an action to foreclose the mortgage existing upon the said property in favor of the said Junta. So said and signed, to which I certify.—Jose de la Rosa.—R. Cruz.

Number one thousand one hundred and fifty-eight. In Manila, this 21st day of November, 1899, before me, Francisco Barrera y Caldes, Doctor of Civil and Canonical Law, and a Notary Public in and for the City of Manila, personally appeared Doña Josefa Anastacia Florencia de Victoria y Mendoza, of age, widow, and a resident of this City with personal cedula of the tenth class, No. 2868, issued at Torrelavega, Santander, on the 22nd of August, 1898, as executrix under the will of her deceased husband, Jose Moreno Lacalle,

122 executed in the City of Malaga, before the Notary Public Juan Barrosa Ledesma, and numbered 29, on the tenth of February, 1899, as appears from the first copy of the said instrument, which she exhibited to me, as proof that she was such executrix, which said will is as follows.—“In Malaga, this tenth day of February, 1899, at three o'clock, P. M., before me, Juan Barrosa Ladesmaa licentiate in civil law, philosophy and letters, and a Notary Public in and for this City, at number twenty Paseo de Sancha, personally appeared the Most Illustrious, Jose Moreno Lacalle, a resident of Manila, and a native of Malaga, temporarily residing in this City, 46 years of age, married, attorney at law, with personal cedula of the sixth class, issued at Torrelavega, Santander, numbered 3867, on the 22nd of August, last, and having in my judgment, and in that of the witnesses present, the full enjoyment of his mental faculties, and the necessary legal capacity to execute this, his last will and testament, and after invoking the Venerated and Holy Name of God, and protesting his faith in the Roman Catholic Apostolic religion, said.....’6. That he appoints as his executor, his wife, the Most Illustrious Doña Josefa Anastacia, Florencia Victoria y Mendoza, and she failing, Juan Jose Russell y Saenz de Vismanos, as resident of Manila, in conjunction with the testator’s son, Jose Pablo, provided that at the time of his, the testator’s death, the said José Pablo has attained the legal or voluntary emancipation, and they failing, Gonzalo Cespides, a resident of Manila, with full power to, upon his death, take charge of all of his property and administer the same as they see fit, disposing of such as may be necessary for the payment of any debts, or for the purpose of meeting the necessities of his heirs; to pay all liabilities against his estate and to collect all sums due it, and to demand from the insurance companies in which the testator may be insured, the payment of the same, and for this purpose such insurance companies shall

123 consider the said executor as sufficiently authorized to demand such payment, hereby extending to his said executors for the period of one year the time of their appointment’. In the express terms above set forth, and in strict conformity with his instructions, the said Don Jose Moreno Lacalle executed this, his

last will and testament, which after having been read aloud by me, the undersigned notary, in the presence of the testator and of the witnesses, residents of this City, Manuel Narango Vallejo, Fernando Contreras Aguilar, and Juan Martinez Romero, and after having duly informed them of their right to read the same themselves, the former approved the will, which was signed by him and the witnesses. That the witnesses saw and understood the testator; that they assure me that they know him; that I the notary know him, and that this will was executed in one continuous act, with all the formalities provided by the Civil Code, and to all of the contents of this document written on three sheets of paper of the twelfth class, numbered 571,068—571,069 and 571,070, I certify.—Jose Moreno Lacalle, Manuel Narango, Juan Martinez, Fernando Contreras.—(Signed) J. Barroso.—Rubric.—Note: I certify that on the same day on which it was executed, there was *was* sent to the senior member of the Notarial Association of the Territory a communication in the manner provided in section 7 of the Royal Decree of the nineteenth of February, 1891.—Barroso. The foregoing first copy of its original on file in my protocol of public instruments for this year, under number 29, is issued by me at the request of Jose Moreno Lacalle with the remarks provided in the order of the 21st of April, 1873, on a sheet of paper, class six number 18,708 and two sheets of the tenth class, numbered 553,154 and 553,155, after making the correspon. entry as to the issuance of this Copy in Malaga, this tenth day of February, 1899. (Signed) J. Barroso. Rubric. Notary's seal.—Legalisation. The undersigned notaries of the
 124 Illustrous Association of Granada, in and for the District of this City, of which we are residents, do hereby certify as to the authenticity of the foregoing signature and rubric of the Notary, Juan Barroso Ledesma.—Malaga, February 11th, 1899.—(Signed) Feo. Diaz Trevilla.—rubric. (Signed) L. J. Villarejos Juan.—Rubric. Two legalization stamps of the value of four pesetas.—The foregoing is a true copy of its original, to which I certify, and having in my judgment the necessary legal capacity to execute this instrument, nothing to the contrary to me appearing, as such executrix, freely and of her own will stated: That as testamentary executrix of her deceased husband, the Most Illustrious Don Jose Moreno Lacalle, she hereby confers full power as sufficient as may be requisite and necessary in law, upon Juan Jose Russell y Saenz de Vismanos, a merchant, and the attorneys-at-law, Pablo Antonio Martinez, Alfredo Chicote y Beltran and Antonio Saenz y Conde, all of whom are of age and residents of this City, to, in her name and stead, and as such administrator, either jointly or individually, advise, assist and defend the said estate in any and all actions to which it may be a party in the justice court, in the Court of First Instance, and the Supreme Court of Justice, and any other ordinary courts of general or especial jurisdiction, and for this purpose to appear before the same, instituting such civil or criminal actions as may be proper, proposing or attending acts of conciliation, of voluntary jurisdiction, prosecuting criminal actions, civil, ordinary, executive, possessory,

summary and extra-summary ones, suits in intervention, testamentary proceedings, bankruptcy proceedings and all other proceedings allowed by law, and for this purpose to file complaints, answers, informations, and such other pleadings as may be necessary; to set up defenses, to introduce evidence of judicial confession, documentary, oral, or expert evidence or testimony, opposing and

125 objecting to whatever may be alleged or done to the contrary, to accept service of notices, citations or summonses; to impeach the officers of the administration of justice whenever necessary; to impeach witnesses, prosecuting the remedies of appeal, nullity, cassation, revision, civil or criminal liability, against any legal order or judgment; to desist from such remedies; to secure attachments, the ratification of preliminary attachments, the dissolution of same, and the execution of judgments; executing finally all other acts permitted by law in connection with the prosecution and final determination of the matters and actions in which they may intervene; for which purpose, and all matters incidental thereto, she hereby confers upon them the most ample power, promising to ratify and confirm all that her said attorneys may do in the premises. So said in the presence of the witnesses to this instrument. Candido del Rosario y Espiritu and Tomas Aguilon y Pacetes, of age and residents of this city; and this instrument having been read by all of those present, by virtue of the right which the law gives them, the said grantor ratified the same, to all of which, as well as to the identity, occupation and residence of the said grantor, I certify.—Florencia V., widow of Moreno Lacalle.—Candido Rosario.—Tomas Aguilon.—Dr. Enrique Barrera y Valdes, rubric. Notary's seal. The foregoing is a true copy of its original on file in my protocol of public instruments, registered under number 1,158, to which I certify, and at the request of the grantor of the said power, I issue these presents, written on three sheets of paper, initialed by me, signed and sealed with my seal of office on the date hereinbefore mentioned, a note of the issuance hereof having been made upon the original instrument.—Dr. Enrique Barrera y Caldes. Notarial Seal. *Neil Prius Fide. Notaria de Don Enrique Barrera y Caldes.* Manila.—The foregoing power of attorney is sufficient for the purpose therein contemplated. Manila, June 1st, 1900. P.

126 Antonio Martinez.—The foregoing is a true copy appearing at pages 49 to 64 of the executive action instituted by Jose Moreno Lacalle, and continued by his widow, Florencia de Victoria, against Francisco Enriquez as the executor of the estate of the deceased, Antonio Enriquez, to recover a certain sum of money, the said copy having been taken from the original as aforesaid, consisting of six pages, in compliance with the order of the Court dated the 17th instant. Manila September 20th, 1900.—Franco, R. Cruz.

To the Court of First Instance of Intramuros. Pablo Antonio Martinez, a practicing attorney, in behalf of Florencia de Victoria y Mendoza, the widow and testamentary executrix of José Moreno Lacalle, as shown by the attached power of attorney, appears and represents: That there is now pending in this court an executive or

summary action for the recovery of money, instituted by José Moreno Lacalle, deceased, against the estate of Antonio Enriquez y Sequera and that the last thing done therein was the issuance of an order directing José de la Rosa, as attorney for the Junta Administrativa de Obras Pías, to surrender into Court the title deeds of the property of the estate levied upon in these proceedings. José de la Rosa has stated to the Court that these papers are in the hands of Attorney Francisco Ortigas. An order should therefore issue to this gentleman commanding him to surrender the said papers. Considering the stage which these proceedings have reached, in view of the provisions of section 1472 of the Code of Civil Procedure, and of the certificate of the Registrar of Property (page 45 of the record) the attorney in fact for the said Junta Administradora de Obras Pías should be informed of the status of the execution, so that he may intervene, if he desires, in the appraisal and sale of the property

levied upon. This property should be appraised. I select
127 for this purpose as an expert Don Abelardo Lafuente. Notice of this selection should be given to the judgment debtor that he, on his part, may within two days, appoint some other expert, it being understood that, should he fail to do so, he will be taken to have agreed to the designation made by us. For the reasons above set forth, I pray the Court, upon consideration of this petition and attached power of attorney, to recognize the undersigned as a party to these proceedings in behalf of Doña Florencia de Victoria y Mendoza, the testamentary executrix of José Moreno Lacalle, deceased; that Attorney Francisco Ortigas be ordered to present to the Court the title deed of the property attached in this action; that the agent of the said Junta Administradora, de Obras Pías, be duly informed of the present status of the execution proceedings, that he may intervene if he so desires, in the appraisal and sale of the property, and that the said property be duly appraised upon notice to the other side that should he fail to appoint, on his part, within two days, an expert to represent him, he will be understood to have agreed to the appointment of the person designated by us for that purpose. Manila, June 1, 1900.—P. Antonio Martinez.

Court of First Instance of Intramuros. This 2nd day of June, 1900. Order: Let the foregoing petition and attached power of attorney be united to the record. The petitioner Pablo Antonio Martinez is hereby recognized as a party to this action in behalf of Doña Florencia de Victoria y Mendoza, the widow and testamentary executrix of José Moreno Lacalle, deceased; let attorney Francisco Ortigas be required to present to the Clerk of this Court the title deeds of the property known as the "Old Theater," levied upon in these proceedings; let the agent of the Junta Administradora de Obras Pías be informed of the present status of the execution proceedings that he may intervene if he so desires in the ap-
128 praisal and sale of the property attached; let the property be appraised and Abelardo Lafuente, having been appointed as expert for this purpose, by the judgment creditor, the Court does approve his appointment, and he shall be so notified that he may

accept the same and take the pre-scribed oath. Let Francisco Enriquez, as executor of the defendant estate, be duly notified of said appointment and required to appoint another expert on his part within two days, with the understanding that should he fail to do so, he will be taken to have consented to the appointment of the said Mr. Lafuente; and let attorney Pablo Antonio Martinez be required to pay into Court the value of the stamped paper which he should have used in these proceedings. Done by the Court.—Basa. Before me, Franco. R. Cruz.—Rubric.

Notification. In Manila, this 2nd day of June, 1900, notice of the foregoing order was served upon Pablo Antonio Martinez who upon receipt of a copy thereof, signed with me, to which I certify.—Martinez.—R. Cruz.—Appearance: In the Court of First Instance of Intramuros, before the Judge, and in the presence of the Clerk, personally appeared Pablo Antonio Martinez and paid the value of the stamped paper which should have been used by him in these proceedings. Whereupon the said Mr. Martinez signed after the judge, this second day of June, 1900, to which I certify.—Basa.—P. Antonio Martinez.—Franco. R. Cruz.—Court of First Instance of Intramuros, June 2, 1900. Order: Payment having been made in *papel de reintegro*, let the usual note be made upon the same, the lower part to be attached to the record and the upper part to be delivered to the party in interest. Done by the Court, to which I certify.—Basa.—Franco. R. Cruz.

In Manila, this 2nd day of June, 1900, notice of the foregoing order was served upon Pablo Antonio Martinez, who upon receipt of a copy thereof signed with me, to which I certify.—Martinez.—R. Cruz.—Delivery.—Binondo, this second day of June, 1900,—I delivered to Pablo Antonio Martinez, one-half of the *papel de reintegro* tendered by him, and upon receipt thereof, he signed with me, to which I certify.—Martinez.—R. Cruz.—San Sebastian, June 4, 1900. Notice of the foregoing order, dated the second instant, was served by me upon Francisco Enriquez and upon receipt of a copy thereof, he signed with me, to which I certify.—F. Enriquez.—R. Cruz.—Binondo, this fifth day of June, 1900,—I informed Abelardo Lafuente of the order of the second instant and notified him at the same time of his appointment, whereupon he stated that he accepted the appointment and signed with me, to which I certify.—Abelardo Lafuente.—R. Cruz.

In the Court of First Instance of Intramuros, this fifth day of June, 1900, personally appeared before the judge, the clerk being present, Don Abelardo Lafuente, who claimed to be married, of age, an architect by profession and a resident of this City with personal cedula for the present year, and having been sworn in accordance with law, he promised to faithfully discharge the duties of his office and signed after the judge, to which I certify.—Abelardo Lafuente.—Francisco R. Cruz.

Notification.—In Manila, this 11th day of June, 1900, the order of the 2nd instant was served by me upon José de la Rosa, the agent

of the Junta Administradora de Obras Pías, to whom a copy of the same was delivered, to which I certify.—Jose de la Rosa.—R. Cruz.—Manila, June 11, 1900. The foregoing order was served upon Francisco Ortigas, who signed with me, to which I certify.—Ortigas.—R. Cruz.

130 I, Abelardo Lafuente y Almeda, Municipal Architect of this City, do hereby certify: That by an order of the Court of First Instance of the District of Intramuros, made and entered in the executive action instituted by the heirs of José Moreno Lacalle against Francisco Enriquez, I was appointed an expert to measure and appraise the property on Calle Dasmariñas, known as No. 41-75 of Binondo of this City, and that in compliance with the said order, I proceeded according- with the following result:

(Description of the Property).—The property consists of a lot occupying an entire block, and several buildings thereon.—(Lot—shape—boundaries—area).—The lot has the shape of a polygon resembling a trapezoid, is bounded in front by Calle Dasmariñas with a frontage of 59.60 meters; on the right by Calle Ugalde, 30.50 meters; on the left by Calle Marquina, 30.55 meters; and on the back by Calle Poblete, 59.70 meters, having a superficial area of 1820 square meters and 51 square decimeters.—Buildings:—There are several buildings, as follows: fifteen two storey *accesorias*, fronting on calle Dasmariñas, with stone walls and tile roof, other structures upon the same lot, some covered with tile and others with galvanized iron roofing in such a bad condition that they can not be classified as buildings, but as so much useful material. Value: Considering the present, market value of the other property lying in the same district, the shape of the lot, its location and the fact that it covers an entire block, I find that the land consisting of 1820.51 square meters is worth 27,308.65 dollars, this at the rate of 15 dollars the square meter, and the building 5721.40 dollars, making a total of \$33,029.05.

The property is therefore appraised by me in the sum of \$33,029.05, according to my best knowledge and belief. Manila, June 16, 1900. Abelardo Lafuente.—Appearance: In the Court

131 of First Instance of Intramuros, June 16, 1900. Before the Honorable Judge of this Court, the undersigned Clerk being present, personally appeared the architect, Abelardo Lafuente, who presented the foregoing certificate as to the appraisal of the property attached in this action, and prayed the Court to allow the same to be filed. Whereupon the said Lafuente signed immediately after the Judge, to which I certify.—Basa.—Abelardo Lafuente.—Franco, R. Cruz.—In the Court of the First Instance of Intramuros, this 16th day of June, 1900. Order.—Let the foregoing certificate be attached to the record and upon notification of the contents by the said Mr. Lafuente, let the Court be so informed. Done by the Court. Basa.—Before me, Franco, R. Cruz.

In Manila this 16th day of June, 1900, Pablo Antonio Martínez was served with a copy of the foregoing order and upon receipt of same he signed with me, to which I certify.—Martínez.—R. Cruz.—

Binondo, this 16th day of June, 1900. Abelardo Lafuente was served with a copy of the foregoing order, and upon receipt of same signed with me, to which I certify.—Abelardo Lafuente.—R. Cruz.—Ratification: Court of First Instance of Intramuros, this 18th day of June, 1900, the Judge, before me the Clerk, having first duly sworn Mr. Abelardo Lafuente, showing him the certificate above-mentioned (Record p. —), according to law, to tell the truth, the whole truth and nothing but the truth, asked him whether he confirmed and ratified the contents of the same, to which he replied that he ratified and confirmed the same, and signed after the judge, to which I certify.—Basa—Abelardo Lafuente—R. Cruz.

132 Number thirty nine: In Manila, this 13th day of November, 1899. Before me, Jose Maria Rosado y Calvo, a Notary Public in and for the City of Manila, personally appeared, Don Francisco Enriquez y Villanueva, attorney at law, of age, married, and a resident of this City, with personal cedula or certificate of registration No. 54039, issued by the Government of this Province, for himself, and as husband and legal representative of his legitimate wife Doña Carmen de la Cavada y Salavert; in his capacity as testamentary executor of his father Antonio Enriquez y Sequera, deceased, as shown by the certificate issued by José Perez de Lara, one of the Clerks of the Court of First Instance of the District of Binondo of this City, which said certificate is as follows: "I, José Perez de Lara, one of the Clerks of the Court of First Instance of Binondo of this City, do hereby certify. That at page 14 of the record of the proceedings instituted in this Court for the appointment of a guardian *ad litem* for the minors Trinidad and Concepcion Enriquez and that of an executor for the estate of Antonio Enriquez y Sequera, appears the following: Appointment: In the Court of First Instance of Binondo, this 30th day of April, 1886, the Honorable Judge of this Court, before me, the Clerk, administered to Francisco Enriquez y Villanueva, of age, and a resident of this City, the oath prescribed by law under which he, the said Enriquez, promised to faithfully discharge the duties of his office as such testamentary executor of his deceased father, Antonio Enriquez, who appointed him to said office in his will dated May 4, 1872, in the event of the death of his mother, Ciriaca Villanueva, deceased the Court having admonished the said executor to respect and comply with the second clause of the codicil made by the said Antonio Enriquez October 5, 1872, which is as follows: "It is likewise his will that the inventory, valuation and partition of his estate be made

extra judicially and by virtue of the power which the law grants him, he forbids any judicial interference in the settlement thereof, conferring upon his executors the necessary authority therefor, without any restriction whatever, and extending the term of office for such period as may be required for this purpose." whereupon the Court said that Francisco Enriquez y Villanueva should be, and was hereby appointed as such executor, being relieved of the necessity of giving bond, that he may execute in all its parts, the will of the said Antonio Enriquez, and that as such executor

he may execute such acts of administration as the faithful performance of his duties may require, receiving all sums of money and property which may be due or belong to the said estate, giving receipts therefor; to demand an accounting from those who should render such accounts to the estate, approving the same if proper, and if not, objecting thereto; to execute contracts of lease and to rescind those which may have been heretofore executed; to pay all just claims against the estate and finally to perform all other acts which may be necessary for the proper administration of the estate, for which he will care with due diligence; to represent the said estate in or out of court, defending the same in all actions to which it may be a party before any tribunals or authorities, performing all other acts, judicially or extrajudicially, as may be necessary in the discharge of his duties, and for this purpose and all other incidental matters, full power is hereby conferred upon him, without any limitation whatever, and he is hereby authorized to substitute the same, on his own responsibility for the due performance of such acts as he may not be able to perform himself, and for the greater efficacy of all that the said executor, Francisco Enriquez may

134 do in behalf of the estate, the court will render its assistance through its judicial authority insofar as possible under the

law, and it is ordered that as many copies of this power be given to him, the said executor, as he may require. Done by the Court, and signed by the party in interest immediately after the Judge, to which I certify.—Raymundo Puig.—Francisco Enriquez.—Before me, Jose Perez de Lara.—The foregoing is a true copy of its original, to which I certify, and in compliance with the order of the Court entered this day, I issue these presents, approved by the Judge, on a sheet of stamped paper, and in witness thereof, I hereunto set my hand, this thirtieth day of April, 1896. Countersigned: Puig.—Jose Perez de Lara.—Court Seal.—The foregoing is a true copy of its original; and having in my judgment the necessary capacity to execute this instrument, nothing to the contrary to me appearing, freely and of his own will, stated: That he grants general power, and as ample as may be sufficient and necessary, to Attorneys Francisco, Ortigas y Barcinas, Juan Manzano y Mendez, Alfredo Chicote y Bertran, Florencio Gonzalez Dias, Simplicio del Rosario, Pablo Antonio Martinez, and Jose Felix Martinez, y Fernandez, all of whom are of age, and residents of this City, to in his name and stead, either jointly or separately, appear and defend him in any action or actions to which he may be a party in the justice courts, Courts of First Instance, Supreme Court of Justice, or any other ordinary tribunal, of general or especial jurisdiction, instituting such civil or criminal actions as may be proper, instituting or attending acts of conciliation of voluntary jurisdiction, civil or criminal actions, whether ordinary, executive, possessory, summary, extrasummary, or otherwise, suits in intervention, testamentary or bankruptcy proceedings, or any other proceedings known to the law; to file complaints, answers, informations and any motions or petitions which may be necessary, to interpose defences and exceptions, to introduce evidence, either by

judicial confession or documentary proof, expert and oral testimony, rebutting or disproving any allegations contrary to his interests, to accept service of notices, citations and summonses; to impeach any official of the administration of justice, or any witness; to ask for reconsideration of any judgment or order, to prosecute appeals or writs of error, recourses of nullity, cassation, revision, civil or criminal liability, against any legal order or judgment; to desist from such remedies, to secure attachments, the ratification of preliminary attachments, the dissolution of same, the sale of property and the execution of judgments, and finally, to perform all other acts which may be required by the laws of procedure in the prosecution of judicial actions, until the final determination of those in which they may intervene, for which purpose and all matters incidental thereto, he hereby confers upon them the most ample power, promising to ratify and confirm all that his said attorneys may *due* in the premises. So said in the presence of the witnesses to this instrument, Esteban Torribio y Barrientos and Leon Molina y Reyes, both of age and residents of this City; and this instrument having been read by all of those present, by virtue of the right which the law gives them, the said grantor ratified the same, to all of which, as well as to the identity, occupation and residence of the said grantor, I certify. Francisco Enriquez.—Esteban Torribio Barrientos.—Leon Molina—Notary's seal—Jose Maria Rosado y Calvo, rubric. The foregoing is a true copy of its original, recorded under number 39, in my general protocol of public instruments for the present year, and in witness thereof, and at the request of the grantor, I issue this second copy, on three sheets of paper, after entering the corresponding note thereof upon the original, and I

hereto affix my seal of office, in Manila, the day, month and
136 year first above-mentioned.—Jose Maria Rosado y Calvo—

Seal: *Neil prius fide*. Office of the Notary, Jose Maria Rosado, Manila.—The foregoing power of attorney is sufficient for the purposes therein stated. Manila, August the 6th, 1900.—J. Felix. It is a true copy of its original appearing on pages 72 to 77 of the record of the executive action instituted by José Moreno Lacalle, and continued by his widow, Florencia de Victoria against Francisco Enriquez, for the recovery of a sum of money, to which I certify, in compliance with the order of the Court, dated the 16th instant.—Manila, September 21st, 1900.

Upon the motion presented by you on the 15th of February, last, relative to the order of succession of the Judges of the Court of First Instance in case of impeachment, as fixed by the Court of First Instance of Intramuros, the *Sala de Gobierno* (Executive Branch) of this Supreme Court, on the 20th of April adopted the following resolution: "In accordance with the opinion of the Attorney-General, Mr. Rafael Enriquez, must and shall abide by the orders entered on the fourth of December, 1899 and fifth of January and second of March, of the present year in these proceedings." The orders referred to in the foregoing resolution are as follows: *Sala de Gobierno* of the Supreme Court of Justice of the Philippines. December 4th,

1899, Whereas, the Court of First Instance of Intramuros, presided over by the Honorable Basa y Enriquez, has consulted this Court on the question of his impeachment by Francisco Enriquez in all the civil actions pending in said Court between the said Francisco Enriquez and his brothers, the ground for such impeachment being the alleged intimate friendship existing between the judge and Rafael and Cayetano Enriquez; also in case No. 82 of the Court of First Instance of Binondo, as a special judge appointed by this Court on the 27th of November last, the members whose names are signed on the margin hereof, after hearing the Attorney-General, and in conformity with the latter's recommendation, said: As to the impeachment of the said judge in the civil action pending in the Court over which he presides, let an order be issued directing him to proceed in accordance with the Code of Civil Procedure, and as to his impeachment in case No. 82 of the Court of First Instance of Binondo, let the matter be referred to the Attorney-General. So ordered. C. S. Arellano, Florentino Torres, Manuel Araullo Gonzales, Raymundo Melliza, Roman Espiritu," Sala de Gobierno of the Supreme Court of Justice of the Philippine Islands, January 5th, 1900.—The Clerk having reported again upon this matter, and in view of the opinion rendered by the Attorney-General upon the communication addressed to this Court on the second of December, last, by the Judge of the Court of First Instance of Intramuros by Jose Basa Enriquez, appointed special judge to try case No. 82 of the Court of First Instance of Binondo, stating that he had been impeached by the defendant in said cause, Francisco Enriquez, the Judges whose names appear on the margin, said: In conformity with the recommendation of the Attorney-General, let the said case, No. 82 of the Court of First Instance of Binondo against Francisco Enriquez for estafa, and until the final determination of the proceedings relating to the impeachment of the special judge, be transferred to the Justice of the Peace of the District of Intramuros, Hon. Jose Martinez Quintero; and Judge Hipolito Magsalin of the District of Tondo, is hereby assigned to try and decide the question of the impeachment of the Honorable José Basa Enriquez. Let this order be communicated to the impeached judge, and to the other two judges herein designated.—So Ordered.—C. S. Arellano, Florentino Torres, Manuel Araullo Gonzalez, Raymundo Melliza Angulo, Roman Espiritu.—Sala de Gobierno of the Supreme Court of Justice of the Philippine Islands, March 2nd, 1900.—Report having been made upon these proceedings relating to the impeachment of the judges who are taking cognizance of case No. 82 of the Court of First Instance of Binondo against Francisco Enriquez, and of the civil action relating to the partition of the estate of Antonio Enriquez, deceased, and Ciriaca Villanueva, deceased, and upon consideration of the opinion of the Attorney-General as to the inquiry made by the Justice of the Peace of Intramuros, Jose del Castillo, acting as Judge of the Court of First Instance by reglamentary substitution, as to what judge should be substituted for him, in view of the fact that he also had been impeached by the said Francisco Enriquez, the Judges whose names

appear on the margin said: For the reasons stated by the Attorney-General in his said opinion, *Held*, that the Judge of the Court of First Instance who is now trying the question of the impeachment of the Hon. José Basa, should take cognizance of the civil action in question, and let an order issue accordingly to the said José del Castillo, directing him to immediately forward the papers in the said action to the Judge before whom the question of impeachment is pending, notifying the Chief Justice of this Supreme Court of the name of the official who receipted for same. Let a certified

139 copy of the opinion of the 25th of November, last year, be attached to the record, which shall be referred to the Attorney-General for an opinion upon the petition of Francisco Enriquez, dated the fifteenth of February, last.—So Ordered. C. S. Arellano, Florentino Torres, Manuel Araullo Gonzales, Richard W. Young—Eugenio Benites.—All of which I communicate to you for your knowledge and guidance. Manila, August 6th, 1900. Eugenio Benites.—Sr. Don Francisco Enriquez.

To the Court of First Instance of Intramuros.—Jose Felix Martinez, a practicing attorney, in behalf of Francisco Enriquez y Villanueva, and as attorney for him, as appears from the attached power of attorney, appears and states: That against my client, as testamentary executor of Antonio Enriquez y Sequera, deceased, there is now pending in this Court an executive action instituted by Florencio Victoria y Mendoza, the testamentary executrix of her deceased husband, José Moreno Lacalle, and pursuant to instructions received from my said client, I pray the Court that upon consideration of this petition, and the attached power of attorney, I be recognized as a party to the said action in behalf of Francisco Enriquez y Villanueva, and that all further proceedings therein be had upon me. I further state that my grantor was notified of the appointment of an expert by the other side for the appraisal of the property attached in these proceedings, and required to state whether the person appointed was satisfactory to him, or else that he designate some one else. My grantor is satisfied with the appointment made by the other side, and the Court will please make a note to this effect. I further state that I have been informed that my grantor impeached your Honor upon grounds of a general character, to-wit, upon charges by him of malfeasance of office made to the

140 Supreme Court. Consequently, my principal having formally entered his appearance in this action, your Honor should desist from any further intervention herein, transferring the case to the person who is to succeed you under the law, and in accordance with the decision of the Sala de Gobierno of the Supreme Court, entered on the fourth of December, last, upon an enquiry made by you, as appears from the communication hereto attached. I therefore ask the Court to, upon consideration of the foregoing, take such action as may be proper. Manila, August 6th, 1900.—Jose Felix, Attorney at Law. Rubric. Fees. \$15.00.—Court of First Instance of Intramuros, August 11th, 1900.—Order. In view of the foregoing petition, and attached power of attorney, filed by

José Felix Martinez, as attorney and counsel for Francisco Enriquez y Villanueva, which shall be attached to the record of the executive action instituted against him by Pablo Antonio Martinez in behalf of Florencia Victoria, the widow of Jose Moreno Lacalle, for the recovery of a sum of money, and it appearing that petitioner asks to be recognized as a party to the said executive action in the capacity therein stated, and expresses his satisfaction with the person appointed as an expert by the judgment creditor, stating further that, having been informed that Francisco Enriquez had challenged the undersigned upon general grounds, to wit, a charge of malfeasance of office made to the Supreme Court, he desires that such statement be made of record. And considering that, although the challenge made by the said Francisco Enriquez only referred to criminal cause number 82, for estafa, and to all the civil actions between him and his brothers, it did not refer to the present action; that the undersigned has not been expressly challenged in the executive action; that the petitioner has not filed any document showing that he has actually presented to the Supreme Court the complaint for malfeas-

141 ance of office referred to; that, although neither this crime nor any other crime which may have been made the basis of the said complaint really exists, it is nevertheless a fact that the said complaint has been filed, as reported in some of the daily papers of this City, thus bringing the case under section 3 of Article 173, which is sufficient, according to section 174 of the Code of Civil Procedure to prevent the undersigned from taking any further cognizance of the case without awaiting to be expressly challenged, notwithstanding the fact that the allegations of the said complaint are not true; and in order to avoid any possible suspicion of partiality on my part and to safeguard my professional reputation and prestige, if for no other purpose, I abstain from any further intervention in this case, and considering that notwithstanding the provisions of sections 32 and 36 of the Organic Law of 1891 still followed by the Courts recently created, in matters relating to challenges, the Sala de Gobierno of the Supreme Court has decided that the subject should be governed by the provisions of the Code of Civil Procedure so far as civil cases are concerned, as may be gathered from the language of the resolution of the fourth of December, 1899, a copy of which has been filed by the petitioner, and of which the undersigned had no knowledge. The Court, before me the Clerk, said: The Attorney, José Felix is hereby recognized as a party to these proceedings in behalf of Francisco Enriquez y Villanueva; the Court abstains from all further intervention in this executive action, and let the same be referred to the Judge of the Court of First Instance of this City, my senior in length of service, in accordance with sections 186 and 187 of the Code of Civil Procedure, without prejudice to sending a copy of this decision to the Chief Justice of the Supreme Court, in compliance with section 200 of the said Code of Civil Procedure. Done by the Court, to which I certify. Jose Basa. Before me, Franco. R. Cruz.—In Binondo, this thirteenth day of August, 1900. Mr.

142 Pablo A. Martinez was notified by me of the foregoing order, and upon receipt of a copy of same, signed, to which I cer-

tify.—Martinez.—R. Cruz.—Notification.—In Manila, this thirteenth day of August, 1900, Don Jose Felix Martinez was duly notified by me of the foregoing order, and upon receipt of a copy of the same, signed, to which I certify.—Martinez.—R. Cruz.—Note: This thirteenth day of August, 1900, a certified copy of the petition, record page 85, and of the foregoing order, was sent to the Chief Justice as directed by the Court, to which I certify.—R. Cruz. Manila, August 16th, 1900.—Order. The foregoing case having been reported to the Hon. Hipolito Magsalin, Judge of the Court of First Instance of Tondo, ranking the said Jose Basa Enriquez in seniority, it is ordered by the Court that Francisco Enriquez be considered as being satisfied with the person appointed as expert by the judgment creditor for the appraisal of the property attached, and in view of the petition contained in the document filed therewith, and without prejudice to taking such action as may be proper later on, let Francisco Ortigas be required to, within three days, surrender into the Clerk's Office the title deeds of the property in question. Done by the Court, to which I certify. Hipolito Magsalin. Before me, Franco R. Cruz.

To the Court of First Instance of Intramuros.—Pablo Antonio Martinez, a practicing attorney, as counsel for Florencia de Victoria y Mendoza in the executive action now pending in this Court against the estate of Antonio Enriquez y Sequera, deceased, for the recovery of a sum of money, appears and states: That all proceedings which should precede the sale at public auction of the property attached in this action having been had, the same should be advertised for sale in the manner prescribed by law, and to this end the undersigned prays the Court that upon consideration of this petition an order be entered directing that the property attached in this action be
 143 advertised for sale at public auction in the manner prescribed by sections 1477 et seq. of the Code of Civil Procedure.—Manila, August 6th, 1900.—Antonio Martinez, Attorney at Law.—Rubric.—Notification. In Manila, this 20th of August, 1900, Francisco Ortigas was notified by me of the foregoing order, and was informed at the same time of the direction therein contained, and upon receipt of a copy thereof, he signed with me, to which I certify.—Ortigas.—R. Cruz.—In Manila, this 20th of August, 1900, Dan José Felix Martinez was notified by me of the foregoing order, and upon receipt of a copy thereof he signed, to which I certify. J. Felix Martinez.—R. Cruz. In my office this 20th day of August, 1900, Pablo Antonio Martinez was notified by me of the foregoing order, and upon receipt of a copy thereof, signed hereon, to which I certify.—Martinez.—R. Cruz.

To the Court of First Instance of Binondo. Pablo Antonio Martinez, an Attorney at Law, and as counsel for Florencia de Victoria y Mendoza in the executive action now pending in this court against the estate of Antonio Enriquez y Sequera, deceased, appears and states: That he has been notified of the order wherein it is directed that the attorney Francisco Ortigas be required to deliver into Court the title deeds of the property attached in these proceedings within

three days.—In case the said attorney should fail to deliver the said deed within the time stated, and inasmuch as the fact that the property in question belongs to the estate is shown by a certificate issued by the Registrar of Property with reference to the liens existing upon the same, your petitioner, availing himself of the provisions of section 1479 of the Code of Civil Procedure, prays

144 that, upon consideration of this petition, and after the expiration of the time allowed to the said Attorney Francisco Ortigas for the delivery of the title deeds in question, his former request as to the advertisement of the property for sale at public auction, be granted. Manila, August 20th, 1900. (Signed) Antonio Martinez.—Manila, August 21st, 1900. Order. Upon consideration of the foregoing petition, and it appearing that there was received on this day, by this Court, an order from the criminal branch of the Supreme Court notifying the undersigned of the action taken upon the petition presented by Francisco Enriquez charging him with the crime of malfeasance in office and forgery in the action instituted by Rafael Enriquez et al. with reference to the estate of Antonio Enriquez y Sequera, deceased, and considering further that one of the grounds upon which a judge may be challenged under paragraph 3 of section 173 of the Code of Civil Procedure is that the judge has been charged with a crime by one of the parties, and that under section 174 of the same Code the judge in such case and in all the other cases therein enumerated should abstain himself from any further intervention in the case, without awaiting for an express challenge, and considering that Francisco Enriquez is the defendant in this case, as testamentary executor of the said Antonio Enriquez, deceased, the Hon. Hipolito Magsalin, before me the Clerk, said, that he desists from further intervention in this case, which should be forwarded by the Clerk to the Judge of the Court of First Instance of Binondo, José Memije, his junior, and that a copy of this Order should be sent to the Chief Justice of the Supreme Court, in compliance with section 200 of the Code of Civil Procedure.—To which I certify.—Hipolito Magsalin. Before me, Franco. R. Cruz.—Notification.—In Binondo, this 23rd day of August, 1900, Pablo Antonio Martinez was notified of the foregoing order and upon receipt of a copy thereof, he signed hereon, 145 to which I certify.—Martinez.—R. Cruz.—In Manila, this twenty-third day of August, 1900, José Felix Martinez was notified by me of the foregoing order, and upon receipt of a copy thereof signed hereon, to which I certify.—J. Felix Martinez. R. Cruz.—Note: This twenty-third day of August, 1900, communication was sent to the Supreme Court of Justice of these Islands enclosing a certified copy of the foregoing order, to which I certify.—R. Cruz.—Manila, August 25th, 1900. Order. Upon consideration of the record and foregoing petition, and the three days allowed Francisco Ortigas having expired without his having delivered the title deeds of the property attached, and such petition being well-founded, the same is hereby granted, and let the property be advertised for sale at public auction, such sale to take place in the court room of this Court, the amount at which it is appraised being the

minimum bid which will be considered, at ten o'clock A. M., September 10th, next. Let the necessary notice be published in the daily newspapers, *El Grito del Pueblo* and *El Comercio*, and conveniently posted at the main entrance to the Courts of First Instance of this City, in accordance with the provisions of sections 1475 and 1485 of the Code of Civil Procedure. Done by the Court, to which I certify. José M. Memije. Before me, Franco. R. Cruz.—Notification. In Binondo, this twenty-fifth day of August, 1900, Pablo Antonio Martinez was notified of the foregoing order, and upon the receipt of a copy of the same, signed hereon, to which I certify.—Martinez.—R. Cruz.—Notification. In Binondo, this 27th day of August, 1900, José Felix Martinez was notified of the foregoing order, and upon the receipt of a copy of same, signed hereon, to which I certify.—J. Felix. Martinez.—R. Cruz.—Note: This 29th day of August, 1900, a notice was posted in the main entrance to the Courts of First Instance of this City, and copies thereof were sent to the editors of the newspapers, *El Comercio* and *El Grito del Pueblo*, for publication in their said papers, which said notice or edict is as follows:—Edict. By virtue of an order made and

146 entered by the Judge of the Court of First Instance of Binondo, acting as Judge of the Court of First Instance of Intramuros, dated the 25th instant, in the executive action instituted by José Moreno Lacalle and continued by his widow and testamentary executrix, Florencia de Victoria, against Francisco Enriquez as testamentary executor of the deceased Antonio Enriquez y Sequera for the recovery of money, directing that there by advertised for sale at public auction at ten o'clock A. M., September 10th, next, in the Court room of this Court, the property herein attached, and known as the Old Theater, and the lot upon which it stands, which said property has been valued in the sum of thirty-three thousand dollars and five cents, and is situate on Calle Dasmariñas; it is bounded in front by the said street, on the right by Calle Ugalde, on the left by calle Marquina, and in back by Calle Poblete; the sum at which it has been appraised will be the minimum of the bids considered. There now exists upon the said property a mortgage of ten thousand dollars in favor of the Junta Administradora de Obras Pias, with interest at the rate of six per cent. per annum, which said amount and interest due thereon shall be paid with the proceeds of the sale, and notice is hereby given that the title deeds of the said property are now in the hands of the said Junta, from whom they can be obtained as soon as the said mortgage is satisfied, these being the only title deeds which the bidders are entitled to demand and received, and no others. No bid will be accepted for less than two-thirds of the appraised value of the copy and in order to take part in the auction sale, bidders must first deposit into Court or in the place designated for this purpose an amount equal at least to ten per centum in cash of the value of the said property, as above fixed.

The foregoing notice is published for the knowledge and 147 information of the public, and those who desire to bid. Office of the Clerk of the Court of First Instance of Intramuros, this ninth day of August, 1900. Approved—Memije. R. Cruz,

Actuary.—The said official communications were delivered by me to Pablo Antonio Martinez, who upon receipt thereof, signed hereon, to which I certify.—Martinez.—R. Cruz.—Court of First Instance of the District of Tondo. Manila, May 14th, 1900. Order. Let the foregoing petition be attached to the record to which it belongs, and let the copy accompanying the same be delivered to counsel for Francisco Enriquez; and upon consideration of the fact that the said Francisco Enriquez, the administrator of the property of the estate of Antonio Enriquez and Ciriaca Villanueva, deceased, is now confined in Bilibid prison under a charge of estafa, and that he is therefore unable to attend to the administration of such estate; and considering that he being thus disqualified to administer the said property, there should be some one else temporarily appointed to take his place in the management of the said property that the same may not be unprotected, to the prejudice of the parties interested therein, and particularly, of the minor, Antonio Gascon Enriquez; and considering that Don Rafael Enriquez is the proper person to be appointed under the fourth clause of the will executed by the said Antonio Enriquez deceased,—the Hon. Hipolito Magsalan y Bautista, Judge of the Court of First Instance of Tondo, before me the Clerk, said: Without prejudice to the enforcement of the order of this Court of the 8th instant, Don Rafael Enriquez, is hereby appointed as temporary administrator of the property of the estate of the deceased Antonio Enriquez and Ciriaca Villanueva and he is accordingly directed to immediately take charge of the administration and preservation of the said property, and for this purpose, he is hereby vested with such powers as may be necessary in

148 law for the faithful performance of his duties and the tenants or occupants of the property of the said estate shall be notified of his appointment, that they pay the rents to him; and let notice of his appointment be published in the newspapers of this City, and the said Rafael Enriquez is hereby finally ordered to render an account of administration to the Court each month. Done by the Court, to which I certify. Hipolito Magsalin.—Before me, Eustaquio V. de Mendoza.—Notified this 14th day of May, 1900.—Eustaquio V. de Mendoza.—Order. Court of First Instance of Tondo, Manila, this 26th day of May, 1900, let the foregoing petition and copies of the same thereto attached be united to the one preceding it, and all of them to the record of the proceedings to which they refer, and the copies served upon the adverse party; the petitioner is recognized as the representative of the party in whose behalf he appears, and all further process shall be served upon him. And considering that the proceedings out of which arises the prejudicial question raised by the said petition have their origin in the declarative action instituted by Nazario Constantino in behalf of the minor, Antonio Enriquez Gascon, against Francisco Enriquez, relating to the latter's removal from his office as administrator of the property of the estate of the deceased, Antonio Enriquez and Ciriaca Villanueva, which said action is now pending decision by virtue of the appeal taken by counsel for petitioner from the order of the 11th of October, last, whereby a petition for rehearing upon the

order of the 29th of September last was denied, and considering further that where an appeal is allowed in both effects all proceedings in the principal action are suspended and the Court can take no further cognizance, either of the principal action or of any matters incident thereto which may arise after such appeal is allowed, section 372 of the Code of Civil Procedure; and considering further

that notwithstanding the provisions of the section above-
149 cited, the Court can continue to take cognizance of all mat-

ters involved which are the subject of separate proceedings instituted before the appeal is allowed, such as refer to the administration, custody and preservation of the property attached, provided the appeal does not relate to such matters, and the security and safety of persons, section 373 of the said Law.—Considering that these three exceptions do not include the question now raised by the petitioner, which differs from that relating to the appointment of a temporary administrator, this being one of the cases expressly excepted by section 373.—Considering that the foregoing clearly demonstrates that the undersigned has not jurisdiction to take cognizance of the said matter, and considering, finally, that the order of the 14th instant not having been appealed from, the same should be carried into effect. Now, in view of the provisions of law above-cited, the Court, before me the Clerk, said, the petition presented by Francisco Enriquez is hereby denied and let the order of the fourteenth instant be carried into effect. Done by the Court, to which I certify.—Hipolito Magsalin.—Before me, Eustaquio V. de Mendoza.—Copy, Felipe G. Calderon.

No. 998. Manila, this fourth day of October, 1899, Before me, Enrique Barrera y Caldes, Doctor of Civil and Canonical Law, and notary public of this City of Manila, and a resident thereof, personally appeared Antonio Enriquez y Villanueva, of age, married, and a resident of this City, with personal cedula or certificate of registration number 68,655, issued by the Government of this Province; Rafael Enriquez y Villanueva, artist, of age, married and a resident of this City, with certificate of registration No. 54,587, issued by the

Government of this Province, and Trinidad Enriquez y Vil-
150 lanueva, accompanied by her husband, Francisco Javier

Lopez Arbizú, a dentist, of age and a resident of this City, with personal cedula or certificates of registration No. 54,586 and 54,585, respectively, issued by the Assessor and Collector of this Province, and having in my judgment the necessary legal capacity to execute this instrument, nothing to the contrary to me appearing, the said Antonio Enriquez y Villanueva, Rafael Enriquez y Villanueva and Trinidad Enriquez y Villanueva, the latter having first obtained the necessary permission from her husband, Francisco Javier Lopez Arbizú, to which I certify, freely and of their own will stated: That they hereby conferred general power, as sufficient and ample as may be necessary, in favor of their Attorney, Felipe Gonzales Calderon, of age, married and a resident of this City, to, in their names, and in the exercise of their rights and actions, represent, aid and defend them in all matters and actions in which they

may be interested, and which may be pending in the justice courts, Courts of First Instance, Supreme Court of Justice and other ordinary tribunals of general or especial jurisdiction, appearing before the same and instituting such civil or criminal actions as may be proper; to institute and attend acts of conciliation, of voluntary jurisdiction, criminal, civil, ordinary, executive, possessory, summary or extra-summary actions, suits in intervention, testamentary and bankruptcy proceedings or any other proceedings known to the law, and for this purpose to file complaints, answers, informations and such pleadings as may be necessary, setting up exceptions, introducing evidence, whether of judicial confession, documentary, expert or oral, and any other evidence or proof allowed by law, rebutting or disproving anything that may be done or said against our interests; to accept service of notices, citations and summons, to challenge the officials of the administration of justice; to challenge witnesses, asking for rehearings, prosecuting remedies of appeal, nullity, cassation, revision and of civil and criminal liability against any order or judgment; to desist from such remedies and recourses as he may see fit, to apply for attachments, ratification of levies, dissolution of attachments and execution of judgments; and to perform all other acts which the law may require for the proper prosecution and determination of the suits, actions and proceedings thus instituted by him.—Don Rafael Enriquez y Villanueva stated that by a public instrument numbered 418, executed in the City of Madrid before the notary public of the said City Pablo Pedro Vich y Ferrer, as substitute of the notary Federico Plano y Pellisa, Doña Rosario Enriquez y Villanueva, Cayetano Enriquez y Villanueva, Gertrudis Enriquez y Villanueva and Trinidad Enriquez y Villanueva granted him a power of attorney for the purposes therein set forth, as appears from the first copy of the said document, duly certified, to which he has exhibited to me, the pertinent part of which is as follows: "Number four hundred and eighteen.—In the City of Madrid, this sixteenth day of November, 1895.—Before me, Pablo Pedro Vich y Ferrer, a Notary of the Illustrious Notaries Association of this City, and a resident thereof, acting in the absence of the Notary Public Federico Plano Felliza, personally appeared:—Rosario Enriquez Villanueva, thirty-six years of age, a widow and personist and a resident of this City and at present living at number fifteen Conde de Aranda street, all of which appears from the personal cedula of the ninth class which she has exhibited to me, and which I have returned to her, issued on the seventeenth of September of the present year.—Cayetano Enriquez Villanueva, twenty-six years of age, married, a soldier, residing at number fifteen Conde de Aranda street, of this City, all of which appears from his personal cedula, numbered nine thousand, seven hundred and twenty, issued August thirtieth of this year, which he has exhibited to me.—Gertrudis Enriquez Villanueva, twenty-nine years of age, unmarried, and residing at number fifteen Conde de Aranda street, of this City, as appears from her personal cedula issued in the current month and year, and numbered forty-six thousand, four hundred and eighty-five." * * * And the parties having

in my judgment the necessary legal capacity which they state is not limited or restricted in any way, to execute this power of attorney, voluntarily of their own will say: That they hereby confer such special and as ample a power as may be in law required upon their brother, Rafael Enriquez y Villanueva, of age and a resident of this City in order that in behalf of each and all of them he may execute the following acts with reference to the property which they have in Manila, Philippine Islands, from the estate of their deceased parents Antonio Enriquez and Ciriaca Villanueva" * * * "7. To appear before the municipal justices in all acts of conciliation and verbal actions accompanied by a person of his confidence, presenting the complaints which he may deem necessary and taking such exceptions as may be necessary, abiding by any agreement entered into or whatever judgment may be rendered, if he considers the same favorable, or procure the nullity or reversal of such judgments as may be unfavorable.—8. To appear before all the Audiencias, Courts of First Instance, or Tribunals, and before the competent authorities, in all civil or criminal actions, whether of voluntary jurisdiction, administrative or otherwise, administrative investigations or any other proceedings in which the grantors of this power may be interested; to take such steps as his grantors themselves would take, presenting such petitions as may be requisite and necessary until the final determination of such actions and proceedings in any court whatsoever. All of which they acknowledge in the presence of the

153 witnesses to this instrument, Zacarias Lopez Sanz and Domingo Saldan Moran, both of age and residence of this City, known to the grantors of this power who identified them to me. They having been informed of the right which they have under the law to read this document themselves, they waived such right, whereupon I proceeded at their request to read the same, the contents of which they ratify, subscribing this instrument in the presence of the aforesaid witnesses. To all of which, and as to the identity of the said witnesses, their occupations and residences, I, the undersigned notary, certify.—Rosario Enriquez.—Gertrudis Enriquez.—Trinidad Enriquez.—Cayetano Enriquez.—Zacarias Lopez.—Domingo Saldon Mora Signado.—Pablo Pedro Vich,—Rubric. The foregoing is a true and correct copy of the power of attorney authorized by the Notary mentioned herein on the 23rd of November, and which has been exhibited to me.—That by virtue of the right which he has under section one thousand seven hundred and twenty-one of the Civil Code now in force, Rafael Enriquez y Villanueva, by these presents solemnly declares: that he hereby delegates to the said Attorney Felipe Gonzales Calderon the power conferred upon him as aforesaid by Rosario, Cayetano and Gertrudis, surnamed Enriquez y Villanueva, under and by virtue of the instrument of the sixteenth of November, eighteen ninety-five, above-mentioned, but this delegation and substitution of power should be understood to be limited to the acts set forth and specified in this instrument, with reference to which he delegates to the said Attorney such power as has been conferred upon him as agent for his grantors. All, of which they acknowledge in the presence of the witnesses to

this instrument, Jose Rosado y Calvo, practicing attorney, and Tomas Pilar y Pimental, both of age and residents of this City; and all the parties to this instrument having read these presents, by virtue of the rights which the law gives them, ratify and signed the same. To all of which, as well as to the identity occupa-

154 tion and residence of the parties hereto, I certify.—Rafael

Enriquez.—Trinidad Enriquez, Francisco Javier Lopez

Arbizú Antonio Enriquez.—Jose Rosado y Calvo.—Tomas Pilar—

(Signed) Enrique Barrera y Caldez.—There is a rubric and notary's

seal affixed.—This is a second true copy of the original on file in the

protocol of the year eighteen ninety-nine of public instruments of

my office, under number nine hundred and ninety-eight, to which

I certify. And at the request of Rafael Enriquez y Villanueva,

one of the parties to the said instrument, I issue this copy, consisting

of four sheets of stamped paper for the current year, which I have

signed, rubricated and sealed with my seal of Office in Manila, this

ninth day of August, 1900, having made a memorandum of the

issuance of this copy upon the original instrument, to which I cer-

tify.—Enrique Barrera y Caldes.—Seal: Nihil Prius Fide Notario

de Don Enrique Barrera y Caldes, Manila. This copy is sufficient

for the purpose thereof.—Manila, August 11, 1900.—Felipe

Calderon.—

The foregoing is a true copy of its original, appearing on pages ninety-nine to one hundred and six of the executive action instituted by Jose Moreno Lacalle and continued by his wife Florencia de Victoria against Francisco Enriquez, as testamentary executor of the deceased, Antonio Enriquez, for the recovery of a certain sum of money. Manila, September 19th, 1900, to which I certify.—To the Court of First Instance of Intramuros. Felipe G. Calderon, a practicing attorney, in behalf of Rafael Enriquez, as administrator, and the representative of his brothers, of the estate of their deceased parents, as appears from the power of attorney and copies numbered one, two and three, respectively, hereto attached, appears and respectfully states: That it is to the interest of my client, in

155 his capacity as aforesaid, to enable him to make use of the right which the law gives him, that he be considered as a party to the executive action instituted by the deceased, Jose Moreno Lacalle and continued by his widow and administrator in this Court, against Francisco Enriquez for the recovery of fees for professional services rendered by him in the preliminary partition of the said estates, my client and the said Francisco Enriquez having jointly retained Mr. Lacalle in his lifetime to do such preliminary work, and therefore it is unjust that these proceedings should be directed exclusively against the said Francisco, particularly in view of the fact that my client is the one charged with the administration of the property attached. I therefore pray the Court, that upon consideration of this petition, I be recognized as a party to these proceedings in behalf of my client, and that hereafter I be notified of all steps taken therein, and that we be allowed to examine the record for the purpose of making such petition to the Court as may be proper.

There being no certified copies of the said orders of the 14th and 26th of May, last, I file none herewith, and designate the office of the Clerk of the Court of First Instance of Binondo, wherein may be found the record of the proceedings relating to the appointment of administrator of the estate of Enriquez y Villanueva, wherefore, I also pray the Court to allow the attached copies to be filed, and to take into consideration the statement hereinfore made as to the place where the originals of the said orders may be found. Manila, August 29th, 1900. Felipe G. Calderon—Rubric.—I further pray the Court that, desiring to use this power of attorney for other purposes, an order be made directing that it be returned to me, leaving a certified copy in its stead. Manila, same date.—Felipe G. Calderon.—This 29th of August, 1900, the foregoing petition was filed together with the attached power of attorney by Rafael

156 Enriquez, at whose request this memorandum is made, the corresponding receipt having been issued to him, to which I certify.—Rafael Enriquez.—R. Cruz.—Manila, August 30th, 1900.—Order.—Upon consideration of the foregoing petition and documents attached thereto, let the judgment creditor and the judgment debtor be duly notified thereof, so that within three days they may state whatever they desire, the accompanying copies to be delivered to the judgment creditor. As to the first supplementary prayer, the designation is noted; and as to the second supplementary prayer, let the power of attorney be returned to petitioner, leaving a certified copy thereof in its stead. Done by the Court, to which I certify.—Memije. Before me, Franco, R. Cruz. Notification.—Binondo, August 30th, 1900. On this day, the foregoing order was served upon Felipe Calderon, who, having received a copy thereof, signed hereon, to which I certify. Felipe G. Calderon.—R. Cruz.—In Manila, this thirty-first day of August, 1900, Jose Felix Martinez was duly notified by me of the foregoing order, and informed of the petition of Felipe Calderon, whereupon he signed hereon, to which I certify. Jose Felix Martinez. R. Cruz.

In Binondo, this thirty-first day of August, 1900, Pablo Antonio Martinez was notified of the foregoing order and duly informed of the contents of the petition filed by Felipe Calderon, whereupon he signed, after receiving a copy of the said petition, of the documents attached thereto, and of the order, to which I certify.—Martinez.—R. Cruz. To the Court of First Instance of Intramuros.—Pablo Antonio Martinez, Attorney-at-Law, in behalf of Florencia Victoria y Mendoza, widow of Jose Moreno Lacalle, in the executive action instituted by me in this Court against the estate of Antonio

157 Enriquez y Sequera, appears and states, that in compliance with the order of this Court, dated the thirtieth instant, I have been duly notified of the petition presented by Attorney Felipe G. Calderon, as counsel for Rafael Enriquez, the administrator of and coparticipant in the estate of his deceased parents, wherein he asks to be allowed to become a party to these proceedings, and that he be notified of all further steps taken in this case.

The executive action in question was brought against Francisco Enriquez as testamentary executor of his deceased father, and no

other person, except the said Francisco Enriquez, has a right to intervene therein, unless the said Francisco has ceased to be such executor.

Rafael Enriquez alleges that he is the real administrator because he was appointed as such by the Court of First Instance of Binondo by an order entered on the 14th, and another on the 26th of May, last, of which said orders there are copies attached to his petition, duly authenticated by the attorney, Mr. Calderon.

The undersigned denies that Rafael Enriquez is at present the administrator of the estate, and the documents filed by attorney Calderon being mere copies of orders alleged to have been entered by the Court of First Instance of Tondo, are not sufficient to show that Rafael Enriquez is such administrator as he claims to be, and it is not stated whether the said orders were final or not, or whether they were subsequently modified. In order to grant the petition of Rafael Enriquez, it is necessary for him to prove in a satisfactory manner that he is the administrator of the estate of his deceased father.

To Counsel for Florencia de Victoria, it is absolutely immaterial whether the action has to be directed against Don Rafael or against Don Francisco Enriquez, but it being necessary that such action be brought against the real representative of the estate of
158 Antonio Enriquez, he can not under any circumstances accept as such representative a person who has not established his status as such in the manner prescribed by law.

Wherefore, I pray the court that upon consideration of this petition, Rafael Enriquez be required to show that he is such administrator of the estate of Antonio Enriquez, deceased, as he claims before taking any action upon his motion of the 29th inst. Manila, September 1, 1900.—P. Antonio Martinez.

Manila, September 5, 1900.—Order.—Upon consideration of the foregoing petition, let a copy of the same be served upon Rafael Enriquez and the original attached to the record to which it belongs; as to the petition of Rafael Enriquez (Record page 107) upon satisfactory proof that he is at present the administrator of the estate of Antonio Enriquez, deceased, the Court will act upon it.—Done by the Court, to which I certify.—Memije. Before me, Franco. R. Cruz.

In Binondo, this fifth day of September, 1900, Felipe Calderon was notified of the foregoing order and upon receipt of a copy of same, signed hereon, to which I certify.—Felipe Calderon. R. Cruz.

In Binondo, this fifth day of September, 1900, Pablo Antonio Martinez was notified of the foregoing order and upon receipt of a copy of same, signed with me, to which I certify.—Martinez.—R. Cruz.

To the Court of First Instance of Binondo.—I, Felipe Calderon, as attorney and counsel for Rafael Enriquez, the administrator of and co-participant in the estates of his deceased partents, he also

representing his brothers, appears and states to the Court: That I have been notified of the order of this Court dated the fifth instant, upon my petition that my client be included as a party in the executive action instituted by José Moreno Lacalle and continued by his widow and testamentary administratrix against Francisco Enriquez, to recover a certain sum of money for alleged professional services rendered by him, the said Moreno Lacalle, in the preliminary proceedings for the partition of the estates in question.—In the order above referred to my client is required to show that he is at present the duly appointed administrator of the estates.—Such an order made by a judge other than your Honor would not be surprising. For this reason I am compelled to avail myself of the remedy provided in Sec. 360 of the Code of Civil Procedure. There are undeniable facts and circumstances of reason showing that my client is the administrator of the estates. This Court, however, has acted, be it said with all due respect, as though it were ignorant of their existence.

By an order entered on the 31st day of August, your Honor rejected the copies of the orders of the 14th and 26th of May, last, filed by me showing that Rafael Enriquez was such administrator, on the ground that I had no authority to appear for him in the proceeding relating to the administration of the said estates, not bearing in mind that such proceedings arose out of the principal action wherein my authority to represent him appears, adding that such copies would be issued upon the defect being cured. In this order, your Honor has impliedly recognized my client's personality as administrator, he having been appointed such by the said order of the 14th of May, last. From that date Rafael Enriquez has been, and continued to be, the undisputed administrator of the said estates, since the order subsequently entered setting aside that of the 14th was duly appealed from, thus leaving the former order undisturbed. The order excepted to holds that Rafael Enriquez has lost his status as such administrator, since he is now required to prove the same, referring to the order of the 31st of last month, setting aside the appointment of an administrator, which was also appealed from by me. The petition filed by me upon which the order in question was made alleged that my client was not only the administrator of the property attached, but a co-participant therein and the representative and agent of his other brothers, as appears from the power of attorney on file in the proceedings relating to the removal of Francisco Enriquez as administrator of the estates of his deceased parents, a fact, however, which was not taken into consideration when the order of the fifth instant was made, although it constituted a very strong reason why the majority of those interested in this undivided property to be sold, should not be excluded from and denied a hearing in the executive action continued by the widow and testamentary executrix of Moreno Lacalle to their prejudice. The law, based upon eternal principles of equity and justice, does not and can not contemplate that its provisions be construed so as to defeat the well-known principle that "No one shall be condemned without first being given an opportunity to be heard",

and Rafael Enriquez being interested in the executive action in question and representing nearly all of his brothers as he does, has a perfect right to intervene in the proceedings relative to the said judicial sale. Considering the summary nature of the executive action, any order made therein by the Court refusing a hearing to the legitimate co-owners of the property attached, would amount, be it said in strict defence of our interests, to a manifest violation of the aforesaid principle. The order, therefore, directing that one of the best properties of the estate administered by Don Francisco, be sold, should also be served upon my client and the other participants, for the simple reason that such order was prejudicial to them. Since the Court has absolutely disregarded these facts,

161 we can not but respectfully enter our protest against such action on its part. It is not yet too late to correct such an omission and it would be only just to allow Don Rafael Enriquez to intervene at this time in this action in his capacity as administrator. For the reasons stated and considering that in making the order excepted to the Court did not take into consideration that Rafael Enriquez was such administrator and represented nearly all of his brothers, I pray the Court, upon consideration of this petition, to set aside the order in question and allow my client to, in his own behalf, and in that of nearly all of his brothers, intervene in the executive action instituted against Francisco Enriquez by José Moreno Lacalle, deceased, and continued by his widow and testamentary executrix, to recover certain fees for alleged services rendered as attorney in the proceedings preliminary to the partition of estates of my clients' deceased parents.—I further pray that the sale of the property attached in these proceedings, which, according to the local papers, has been set for the tenth instant, be suspended until this motion is decided, in view of the damages that my client would otherwise suffer. Manila, September 7th, 1900. Felipe G. Calderon.—Note: The foregoing motion was filed this tenth day of September, 1900, without a copy by Rafael Enriquez who demanded and was given a receipt therefor, to which I certify.—R. Cruz.

Alejandro Spagnolo, the Spanish Consul at Hong Kong, certifies that at pages forty-nine to fifty-two, both inclusive, of the protocol which was commenced on the twenty-first of July, eighteen ninety-seven, there is recorded a power of attorney which is as follows:—No. 8—Power of Attorney executed by Jose de Gascon y Chacon in favor of Nazario Constantino y Ponce Ignacio.—In the City of Victoria, Capital of the British Colony of Hong Kong, 162 this twenty-eighth day of July, eighteen ninety-nine, before me, the undersigned, graduate of law, Tomas Rodriguez, Vice-Counsel of Spain at this residence, and in the presence of the Consul and the witnesses hereinafter mentioned, personally appeared one Jose de Gascon y Chacon, as the father and legal representative of his minor son, Antonio Jose Gascon y Enriquez, a native of Madrid, of age, a widower, a lawyer by profession, and a transient in this City, with personal cedula number forty-seven thousand eight hundred and forty-nine, issued by the United States Government in

Manila, the twenty-first of July of the present year, who assured me that he was in the full enjoyment of his mental faculties and civil rights, having in my judgment the necessary legal capacity to execute this instrument, and stated that in behalf of his minor son Antonio Jose Gascon y Enriquez he did, and hereby conferred ample and sufficient power upon Nazario Constantino y Ponce Ignacio, of age, a widower, a resident of the District of Tondo, and a lawyer by profession, to in their name and stead, and with regard to the property which they have in the Philippine Islands belonging to the estate of the grantor's deceased wife, Concepción Enriquez, execute the following acts:—1. To arrange and settle the partition of the property of the estate of Antonio Enriquez and Ciriaca Villanueva, the deceased parent of Doña Concepción, taking possession of such as may correspond to him *to* to his son, executing such instruments as may be necessary; 2. To demand an accounting from those who should render the same and to examine, reject or approve such accounts, and pay any balance due, executing such receipts and other documents as may be required in connection therewith; 3. To compromise all claims, actions or rights, active or passive, belonging to him, and to submit the same to the decision of arbitrators or friendly adjusters in case of disagreement; 4. To claim, receive and collect all and any amounts due him, either in cash, goods or effects,

canceling mortgages or attachments existing upon the property of his debtors or sureties, and to collect the monthly rent that the executor and administrator of the estate, Francisco Enriquez, pays him as his share of the income from the property which he now administers, and as an advance upon the share which he and his son have in the estate, giving the necessary receipts therefor; 5. To administer such property as belongs or which may belong to him, and to lease the same, ousting and ejecting tenants whenever he may deem it convenient; 6. And if for the purposes of executing this agency it becomes necessary, he may sell and dispose of the said property, which he shall only do if absolutely necessary, and under the circumstances, required in each particular case; 7. To appear in Court in all acts of conciliation, accompanied by a person of his confidence, filing such complaints and taking such exceptions as may be necessary, abiding by or appealing from any judgment against the grantors, as the said attorney may deem proper; 8. To appear before the Supreme Court or any other superior tribunals in all civil or criminal actions of voluntary jurisdiction, contention, administrative or Governmental, in which the grantors of this power may be interested until their final determination, and for this purpose to file such complaints and petitions, and make such defenses in said actions as may be requisite and necessary; 9. This present power of attorney shall supersede all other powers of attorney heretofore executed by the grantor to his deceased wife, Concepción Enriquez; 10. The attorney herein appointed is authorized and empowered to substitute such other person as he may deem proper in his stead.—So said and acknowledged the grantor of this power in the presence of the witnesses Emilio Orejas y Martinez, a native of Santander, of age,

a retired marine accountant, now residing at Hong Kong, and Federico Alvez y Arellano, a native of Madrid, of age, merchant,
 164 and a resident of Hong Kong, both of whom are registered in this Consulate under numbers ten and three respectively, and whom I informed of the right which they had to read this instrument themselves, which they did, ratifying the same and signing it in the presence of the witness. To all of which, and as to the identity of the grantor and the witnesses heretof, I, the Vice-Consul of Spain, certify. (Signed) Jose de Gascon. (Signed) Federico Alvez.—(Signed) Spagnolo, Consul.

No. 359.—United States Consulate General at Hong Kong. I, R. Wildman, Consul General of the United States of America at Hong Kong, do hereby certify that the signature of Alejandro Spagnolo, Spanish Consul at Hong Kong at the foot of the paper hereto annexed is his true and genuine signature, made and acknowledged in my presence, and that the said Alejandro Spagnolo is personally known to me.—In witness whereof, I have hereto set my hand and affixed the seal of the Consulate General at Hong Kong this seventeenth day of August, eighteen ninety-nine.—R. Wildman, U. S. Consul General.

To the Court of First Instance of Intramuros. I, Nazario Constantino, a resident of Tondo, as the legal representative of the minor Antonio José Gascon Enriquez, as appears from the record of the proceedings relating to the removal of Francisco Enriquez from his office as executor and administrator instituted by me and in the proceedings relating to the partition of the estates of Antonio Enriquez y Sequera and Ciriaca Villanueva, the said minor being one of the heirs, all of which proceedings are now pending in this Court, appear and state: That according to a notice published by order of
 165 this Court on the 1st instant in the local paper "El Grito del Pueblo," authorized by the Clerk of this Court, R. Cruz., with the approval of the Court, the sale at public auction of the property known as the "Old Theater" and lot upon which it stands is advertised for the tenth instant, at 10 A. M., for the sum of 23,029.05 dollars local currency, which said property was attached in the executive action instituted by José Moreno Lacalle and subsequently continued by his widow, Florencia de Victoria against Francisco Enriquez, as testamentary executor of Antonio Enriquez y Sequera, to recover a sum of money, Frankly, it can hardly be explained how the Court has ordered and advertised such sale, knowing as it does, because it so appears from the record of the testamentary proceedings here pending, that the property in question belongs to the estates of Antonio Enriquez and Ciriaca Villanueva and that it never belonged exclusively to Francisco Enriquez. No can I comprehend how the said property could have been legally attached in an executive action against Francisco Enriquez only, to which action he made no resistance or defence, simply because he was the testamentary executor, nor how the property can be sold without even granting a hearing or giving notice to the other co-heirs or co-participants who had no knowledge of the origin, amount, or importance of the debt sought to be satisfied by the execution; who

never recognized, nor do they now recognize such debt as just, and did not and do not know whether the same had been incurred by the deceased spouses or not, so that payment thereof could be demanded in the manner in which it was demanded from the executor Francisco Enriquez, who on the other hand, has in fact and law ceased to be such executor, and there is no reason why execution should not have been issued against the other heirs as well, citing at least the minor Antonio Gascon who has contracted no obligation whatever with José Moreno Lacalle, and much less with the executor Francisco Enriquez. His, the minor's, share has been held.

166 however, for a debt contracted by the executor without his consent. All of these facts, which need not be supported by any citation of authorities, as the Court will readily see, render the execution and consequently the proposed sale at public

auction, null. And, inasmuch as such sale, should it actually take place, would seriously injure the rights and interest of the minor Antonio Gascon y Enriquez who has a good defense against the same and against the attachment upon the property of which he is a joint-owner, as appears from the proceedings relating to the estate of Antonio Enriquez, now pending in this Court of First Instance of Intramuros. Wherefore we contend that all the proceedings relating to the sale under execution of the property known as the "Old Theater" above referred to, are void, and pray the Court to note the protest which the minor, Antonio Gascon, hereby enters against the sale of the property known as the "Old Theater" at public auction, which said sale has been advertised to take place to-day at 10 o'clock A. M., directing that the same be suspended, and that I be formally notified and duly informed of the executive action to which it refers, that I may take such steps as may be necessary in the interest of my client. That as proof of my authority to appear herein, I file herewith a certified copy of my power of attorney, duly executed on seven sheets of paper, under and by virtue of which I was allowed to intervene as attorney for the said minor, Antonio Gascon, in the proceedings relating to the removal of Francisco as testamentary executor, and the proceedings relating to the settlement of the estates of Antonio Enriquez and Ciriaca Villanueva. And desiring to substitute the said power of attorney for the purposes hereinbefore set forth, in favor of the undersigned attorney, I pray the Court to order that it be returned to me, leaving a copy thereof in the record. Further, the undersigned has been informed that the judge who tried the executive action in which the sale at

167 public auction of the property in question was ordered, which sale we now ask be suspended, was challenged by Rafael

Enriquez in the proceedings relating to the estate of Antonio Enriquez, between Don Rafael and his brothers on one side and Francisco Enriquez on the other. And this matter having such intimate relation to the said actions and proceedings, I am of the opinion that the judge thus challenged should also abstain from all further intervention therein. Manila, September 8, 1900. Fermin Mariano—Nazario Constantino.

At 8:30 A. M., this tenth day of September, the foregoing motion was filed by Nazario Constantino with the power of attorney and copies thereto attached; and upon demand a receipt was given him therefor. R. Cruz.—Manila, September 10th, 1900. Order: Upon consideration of the foregoing petition filed by Attorney Felipe Calderon let him be required to file a copy thereof within 24 hours, and admonish him that should he fail to do so the Clerk will make such copy at his, Mr. Calderon's expense, and this done, let it be so reported to the Court. The Court notes the other statements made therein, without prejudice to the sale of the property attached at ten o'clock this morning, as directed. As to the petition presented by Nazario Constantino, action is postponed until he presents the same in due form. Let the power of attorney be returned to him, substituting therefor a certified copy, and as to the last supplementary prayer of his petition, the Court will act upon it when presented in due form. Done by the Court, to which I certify.—Memije.—Before me, Franco. R. Cruz. I certify that at nine o'clock this morning, September 10th, 1900, Rafael Rifoll deposited in this Court the sum of three thousand five hundred dollars, local currency, by check drawn on the Hong Kong Shanghai Banking Corporation, drawn by Chan Songtu, Numbered 246284, he being one of the prospective bidders at the proposed sale of the property attached. R. Cruz.—On

the same date, Theodosio Pintado deposited in this Court a
168 check for three thousand four hundred dollars, local currency, drawn on the Chartered Bank, No. 53229, he being one of the prospective bidders at the proposed sale at public auction of the property attached, to which I certify. R. Cruz.—On the same date, the Chinaman, Benito Sy-Embing, deposited three checks on the Hong Kong Bank for the aggregate sum of three thousand and thirty-four dollars, local currency, and three hundred dollars, local currency, in American bills, he being one of the prospective bidders at the proposed sale at public auction of the property attached, to which I certify. R. Cruz.—On the same date, the Chinaman Lu-Junco deposited the sum of three thousand four hundred dollars, local currency, represented by a check on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached, to which I certify. R. Cruz.—On the same date, Crispulo Lens deposited the sum of three thousand four hundred and twenty-five dollars, local currency, represented by a certified check, gold and other coins, he being one of the prospective bidders at the proposed sale at public auction of the property attached, to which I certify. R. Cruz.—On the same day the Chinaman Su Sayco deposited in this court the sum of three thousand four hundred dollars local currency represented by a check drawn on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached, to which I certify.—R. Cruz.—On the same date the Chinaman Farruco deposited the sum of four thousand and seventeen dollars, local currency, represented by two checks drawn on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I cer-

tify.—R. Cruz.—On the same date, the Chinaman Go-Checo, deposited the sum of three thousand four hundred dollars, local currency, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman

169 Cua-Jaco deposited the sum of three thousand four hundred dollars, local currency, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Ong Quico, deposited the sum of three thousand four hundred dollars, local currency, represented by a check on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action to which I certify. R. Cruz.—On the same date Francisco Cañisares deposited the sum of three thousand four hundred dollars local currency represented by a check on the Spanish-Filipino Bank to enable him to be a bidder at the proposed sale at public auction of the property attached in this action to which I certify. R. Cruz.—

On the same date the Chinaman Co-Angco deposited the sum of three thousand and ten dollars, local currency, he being one of the prospective bidders at the proposed sale at public auction of the property attached in the present action, to which I certify. R. Cruz.—On the same date the Chinaman Ong Caco deposited the sum of three thousand three hundred and fifty dollars local currency, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Francisco Saez deposited the sum of three thousand three hundred and three dollars local currency, represented by a check on the Spanish-Filipino Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman, Long Tiong, deposited the sum of three thousand four hundred dollars local currency, represented by a check on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I

170 certify. R. Cruz.—On the same date the Chinaman Laureano G. deposited the sum of three thousand three hundred dollars, local currency, represented by a check on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Ling Tua deposited the sum of three thousand five hundred dollars, local currency, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify.—R. Cruz.—On the same date the Chinaman Co-Laungco deposited the sum of three thousand three hundred and three dollars, local currency, represented by a check on the Spanish-Filipino Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Antonio Luis

deposited the sum of three thousand three hundred and three dollars, local currency, represented by a check on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Chang-Tat deposited the sum of three thousand four hundred dollars, local currency, represented by a check on the Hong Kong Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Rufino N. Coleco deposited the sum of three thousand four hundred dollars, local currency, in bills of the Spanish-Filipino Bank, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Co-Changeo deposited the sum of three thousand four hundred dollars in notes of the Spanish-Filipino Bank, he

171 being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify.—R. Cruz.—On the same date, Edilberto Calixto deposited the sum of three thousand three hundred and thirty-five dollars, local currency, in silver and in American Bank Notes, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—On the same date the Chinaman Cho-Ang deposited the sum of three thousand three hundred dollars local currency, he being one of the prospective bidders at the proposed sale at public auction of the property attached in this action, to which I certify. R. Cruz.—In the Court room of the Court of First Instance of Binondo, this tenth day of September, 1900, the Hon. Jose Memije, Acting as Judge of the Court of First Instance of Intramuros, instructed the sheriff Catalino de la Cruz to announce the sale at public auction of the property attached, and known as the old theatre on Calle Dasmariñas, district of Binondo upon the basis of its appraised value, whereupon the bidder Rafael Rifoll offered the sum of thirty-three thousand and twenty-nine dollars and five cents, local currency, which bid having been received by the Court, the Chinaman Laureano Gamar raised the bid by seventy dollars, which bid was successively raised by the other bidders until the Chinaman Francisco Saez offered the sum of thirty-three thousand nine hundred and fifteen dollars, which said last bid not being raised by anyone notwithstanding the warning of the auctioneer, the Court closed the proceedings and approved the sale to Francisco Saez, directing that the money deposited by the bidders, with the exception of Francisco Saez, be returned to them, the sum deposited by Saez to be retained by the Court as security and to be applied to the payment of the selling price, the purchaser and the auctioneer signing

hereon after the Judge, to which I certify.—Memije. F. S.
172 Co-Tiongco, Catalino de la Cruz, Francisco R. Cruz. In Manila, this tenth day of September, 1900, the foregoing order was notified to Jose Felix Martinez, who upon receipt of a copy thereof, signed hereon, to which I certify. Felix Martinez. R.

Cruz.—Notification. This eleventh day of September, 1900, Don Pablo Antonio Martinez was notified of the order of yesterday, and upon the receipt of a copy thereof, he signed hereon, to which I certify. Martinez. R. Cruz.—I certify that yesterday, and as soon as the sale at public auction was terminated there were returned to the bidders the amounts respectively deposited by them. September 11th, 1900. R. Cruz.—Binondo, September 11th, 1900, Felipe G. Calderon was notified of the foregoing order and upon receipt of a copy thereof, signed hereon, to which I certify. Felipe G. Calderon. R. Cruz.—Tondo, September 11th, 1900. The foregoing order was notified to Nazario Constantino, who upon receipt of a copy thereof, signed hereon, to which I certify. N. Constantino. R. Cruz.

To the Court of First Instance of Intramuros, Pablo Antonio Martinez, an attorney at law, as counsel for Florencia de Victoria y Mendoza, widow of Jose Moreno Lacalle, in the executive action instituted by me in this Court against the estate of Antonio Enriquez y Sequera, appears and states: That the property attached in these proceedings was to-day sold at public auction, the same having been purchased by the highest bidder, the Chinaman Francisco Saez for the sum of thirty-three thousand nine hundred and fifteen dollars, local currency. In view of the provisions of sections 1492 and 1493 of the Code of Civil Procedure, I pray the Court that upon consideration of this petition the said sale be approved, if the Court has not already done so, and that the Clerk be directed to make a
 173 liquidation of the liens existing upon the said property, deducting from the purchase price the amount of the liens and encumbrances existing thereon and that such liquidation be duly communicated to the parties interested and the purchaser for a period of three days. Manila, September 10th, 1900. Antonio Martinez.—Manila, September 11th, 1900. Order. Let the foregoing petition be attached to the record to which it belongs and the Clerk of this Court, since the sale at public auction was approved by the undersigned at the time it took place, will proceed to make a liquidation of the liens existing upon the property, and to tax the costs. The agent of the Junta Administradora de Obras Pias, Jose de la Rosa, shall be duly notified of this Order and required to state the amount of the mortgage which they hold on the property, with accrued interest thereon. Done by the Court, to which I certify. Memije—Before me, Franco R. Cruz. This 11th day of September, 1900, the foregoing order was notified to Jose Felix Martinez, who upon receipt of a copy thereof, signed hereon, to which I certify. Felix Martinez. R. Cruz.—This 11th day of September, 1900, the foregoing order was notified to Pablo Antonio Martinez, who upon receipt thereof, signed hereon to which I certify. Martinez. R. Cruz.—Manila, September fourteenth, 1900. Order. Copy of the petition at page 114 having been filed by Rafael Enriquez, let the same be served upon the judgment creditor; and it appearing that counsel for Rafael Enriquez filed a petition in this Court (record, page 107) asking that he be considered as a party to this action,

and that all subsequent proceedings be had with him, claiming that he is at present the administrator of the estate of the deceased, Antonio Enriquez, the judgment debtor, and also a co-participant therein and the agent of nearly all of his brothers, and to show this he has also filed a true copy of the orders entered by the Honorable Hipolito Magsalin, Judge of the Court of First Instance of Tondo on the 14th and 26th of May, last, by the first
 174 of which the said Don Rafael was appointed acting administrator of the said estate, whereas by the second order the motion of Don Francisco Enriquez relating to the nullity of the proceedings was denied, directing that the order of the 14th be carried into effect, and the Court, by an order entered on the fifth instant, said that action upon the said petition would be postponed until the said Rafael Enriquez had satisfactorily shown that he was such administrator as he claimed. It appearing further that the said order having been served upon his attorney and counsel, the foregoing petition was filed asking that for the reasons therein set forth the order in question be set aside and that he, the said Rafael Enriquez be considered as a party to the said proceedings on his own behalf and in behalf of his brothers whom he represents. Considering that the execution was issued against the testamentary executor as the representative of the estate, which was still undivided, the said Rafael Enriquez can not be considered as a party to these proceedings unless he shows by competent proof that he is such administrator. Considering further that the order excepted to does not deny the petition of Rafael Enriquez, but simply requires that he prove by competent evidence his status as such administrator, wherefore he has suffered no injury, the Hon. Jose Memije, Judge of the Court of First Instance of Binondo by reglamentary substitution, before me, the Clerk, said, the motion to set aside the order of the fifth instant is hereby denied, with costs. Done by the Court.—Jose M. Memije—Before me, Franco R. Cruz.

In the Court of First Instance of Intramuros.—Felipe G. Calderon, as attorney and counsel for Rafael Enriquez, the administrator of and co-participant in the estates of his deceased parents, Antonio Enriquez and Ciriaca Villanueva, in the executive action instituted against Francisco Enriquez by the widow and testamentary executrix of Jose Moreno Lacalle to recover certain
 175 fees for alleged professional services by him rendered in the proceedings preliminary to the partition of the said estates, appears and states to the Court: That on the tenth instant there was sold at public auction, as a result of the said executive action one of the properties which constitute the estate of which Rafael Enriquez is administrator, the order whereby the latter was suspended from his said office having been duly appealed from, and that your Honor, be it said with all due respect, has failed to take any action upon the hearing asked for by the undersigned counsel for Rafael Enriquez in all matters connected with the said estate, which motion was also made by the minor Antonio Gascon, one of the joint owners of the property in question.—Section 183 of the Code of Civil Pro-

cedure provides that: "If the official challenged believes that he is not included in the provision upon which the motion for rehearing is based, he shall deny such motion and direct that a separate proceeding be had at the expense of the party challenging to try the question thus raised."—Otherwise the judge should have, with greater reason, entered an order inhibiting himself, and directing that the case be referred to the person who should take his place, so that no other order could be made which had no reference to the matter. (Section 181.)—The Court therefore by proceeding with the sale of the property at public auction, a matter in which it could not legally interfere under section 184 of the Code above-cited, has violated, be it said with due respect, the section above-quoted. Considering that the Civil Code, which is a law of a suppletory nature as to matters governed by special laws, provides that all acts contrary to law are null and void, sections 4 and 16 of the Civil Code, all proceedings had by the Court on and after the sixth instant, when the said motion was presented, are absolutely null and void, including the proceedings relating to the sale at
176 public auction of the property in question, held on the tenth instant, which said property the Court well knows belongs to the estate of Antonio Enriquez. Therefore, without prejudice to suing for damages on account of the nullity of the said proceedings, I hereby pray the Court to render a decision upon the challenge made on the sixth instant in the proceedings relating to the administration of the estate now pending before this Court, holding that the said sale of the property known as the "Old Theater" of Binondo is null, with the costs against the judge who acted therein. Manila, September 13th, 1900. Felipe G. Calderon—Manila, September 14th, 1900. Order. Upon consideration of the foregoing petition, let the copy thereof, which was filed with the same, be served upon the judgment creditor, and there being no evidence of record as to the status claimed by Rafael Enriquez, his petition is hereby denied and he is required to present his motion in a concrete form in the proceedings to which it relates. Done by the Court, Memije.—Franco. R. Cruz. Notification. This fifteenth day of September, 1900, Don Pablo Antonio Martinez was duly informed and notified of the foregoing order of the 14th instant, and upon receipt of a copy of the petitions of Felipe Calderon, and of the said order, he signed hereon, to which I certify. Martinez. R. Cruz. Notification. In Binondo, this fifteenth day of September, 1900, Don Felipe Calderon was duly notified and informed of the foregoing order of the 14th instant, and his attention called to the direction therein contained, and served with a copy of the said order, whereupon he signed hereon, to which I certify. Felipe J. Calderon. R. Cruz. Notification. In Manila, this fifteenth day of September, 1900. Don Jose Felix Martinez was duly notified of the foregoing order of the 14th instant, whereupon he signed hereon, to which I certify. J. Felix Martinez. R. Cruz.

To the Court of First Instance of Binondo. Jose Felix Martinez as attorney and counsel for Francisco Enriquez y Villanueva, 177 the administrator of the property of the deceased Antonio Enriquez and Ciriaca Villanueva, in the executive action now pending in this Court against the said estate, instituted by the heirs of Jose Moreno Lacalle, appears and states: That desiring to use the power of attorney given to me by my said client for other purposes, which power of attorney is attached to the record of the execution action, I pray the Court to enter an order directing that the same be detached from the record and delivered to me. Manila, September 15th, 1900. Felix Martinez. Fees. \$6.—Court of First Instance of Binondo, this 17th day of September, 1900. Order. Upon consideration of the foregoing petition, it is ordered that the same be attached to the record to which it belongs, and that the power of attorney referred to therein be returned to petitioner, substituting therefor a copy of the same. Done by the Court, to which I certify. Memije. Before me, Franco. R. Cruz.—This seventeenth day of September, 1900, Pablo Antonio Martinez was duly notified of the foregoing order and upon receipt of copy of same he signed hereon to which I certify. Martinez.—R. Cruz. This seventeenth day of September, 1900, Jose Felix Martinez was duly notified of the foregoing order, and upon receipt of a copy thereof, he signed hereon, to which I certify. J. Felix Martinez.—R. Cruz.

To the Court of First Instance of Binondo. Pablo Antonio Martinez, as attorney and counsel for Florencia Victoria, the widow and testamentary executrix of her deceased husband, Jose Moreno Lacalle, in the executive action now pending in this Court against the estate of Antonio Enriquez and Ciriaca Villanueva, deceased, appears and states: That desiring to use for other purposes the power of attorney given me by my said client, which power of attorney is attached to the record of the proceedings aforesaid, I 178 pray the Court that upon consideration of this petition an order be entered directing that it be detached from the record and delivered to me. Manila, September 15th, 1900. P. Antonio Martinez. Attorney at Law.—Manila, this 17th day of September, 1900. Order. Upon consideration of the foregoing petition, let the same be attached to the record to which it belongs; and it is granted. Let the power of attorney referred to therein be detached from the record and returned to the petitioner as requested. Done by the Court, to which I certify. Memije.—Before me, Franco R. Cruz. This seventeenth day of September, 1900, Pablo Antonio Martinez was duly notified of the foregoing order and upon receipt of copy of the same, signed hereon, to which I certify. Martinez. R. Cruz.—This seventeenth day of September, 1900, Jose Felix Martinez was notified of the foregoing order and upon receipt of a copy of the same, signed hereon, to which I certify. J. Felix Martinez. R. Cruz.

Fees due Jose Moreno Lacalle in the Executive Action Instituted by Him and Continued by His Heirs Against the Estate of Antonio Enriquez.

1898.		
December 29.	Certificate as to the sufficiency of a power of attorney, and petition preliminary to the issuance of execution (signed by Attorney Chicote).....	15.00
1899.		
January 4.	Petition signed by the same attorney praying that the Court adjourn to the house of the judgment debtor to take his deposition.....	8.00
January 12.	Complaint in executive action, signed by Attorney Gonzalo Cespedes.....	20.00
July 3.	Petition asking that judgment debtor be defaulted	8.00
July 26.	Petition asking that case be set down for hearing and judgment.....	8.00
179	September 5. Petition asking that judgment be declared final.....	8.00
August 25.	Petition asking that judgment be notified to the debtor personally.....	8.00
September 12.	Petition asking that the notary public Mr. Barrera be required to surrender title deeds.....	8.00
September 26.	Petition asking that the administrator of the Obras Pias be required to surrender the title deeds.....	8.00
1900.		
June 1st.	Petition asking that counsel for Obras Pias be required to surrender the said titles and that an expert be appointed for the appraisal of the property attached.....	8.00
August 6.	Petition asking that the property attached be sold at public auction.....	8.00
August 20.	Petition asking that upon expiration of time allowed for the surrender of title deeds, property be advertised for sale.....	10.00
September 1.	Petition objecting to motion of Rafael Enriquez to be made party to the proceedings.....	10.00
September 10.	Attendance at auction sale.....	16.00
September 10.	Petition asking that liens upon the property be liquidated.....	8.00
September 15.	Petition asking power of attorney be returned	6.00
Fees paid to the Registrar of Property for Northern District of Manila.....		10.00
Paper furnished.....		35.90

Total \$203.00

Manila, September 15, 1900.

(Signed)

P. ANTONIO MARTINEZ,
Attorney at Law.

Number 154.

License No. 12035.

MANILA, *July 2, 1900.*

Don Pablo Antonio Martinez, in behalf of the heirs of Jose Moreno
Lacalle, Debtor.

For the survey and appraisal of the property attached be-
longing to Mr. Enriquez on Calle Dasmariñas, numbers
41 to 75..... \$204.48

Paid by check No. —.

August 22, 1900.

Received payment.

ABELARDO LAFUENTE.

180 In Manila, this eighteenth day of September, 1900. Don
Jose de la Rosa, the administrator of the Junta Administra-
dora de Obras Pias was duly notified by me of the order of the 11th
instant, whereupon he stated that the property in question belonging
to the said Antonio Enriquez was mortgaged to the said Junta to
secure the payment of the sum of eight thousand, eight hundred and
thirty four dollars and thirty-one cents, which includes six thousand,
nine hundred and ninety-five dollars and nine cents, as principal,
and one thousand seven hundred and thirty-three dollars and ninety-
eight cents as interest for the years eighteen ninety-six to eighteen
ninety-nine, plus five dollars and twenty-four cents for Court costs.
So said, and signed hereon. To which I certify. José de la Rosa.
R. Cruz.—Appearance. In the Court of First Instance of Binondo,
this eighteenth day of September, 1900, before the Honorable Judge,
and in the presence of the Clerk, personally appeared Pablo Antonio
Martinez and filed a list of the fees due for services rendered in this
action, as well as a receipt showing that he had payed to Abelardo
Lafuente the amount charged by the latter for the survey and ap-
praisal of the property attached, and asked the court to, upon con-
sideration of the said bill of fees and receipt accompanying the same,
include the amount thereof in the taxation of costs, the said Martinez
signing hereon after the judge, to which I certify.—Memije. P.
Antonio Martinez.—Franco. R. Cruz. Manila, this eighteenth day
of September, 1900. Order. Upon consideration of the foregoing
bill of fees and receipt thereto attached, let the same be united to the
record to which they belong and the amount thereof included in
the taxation of costs; let a memorandum be made of the number of
the check for three thousand three hundred and three dollars de-
posited by the purchaser at the execution sale, Francisco Saez, now
in the possession of the court, and notice given to the director of the
Spanish Filipino Bank on which the said check is drawn that
181 the same be not cashed without an express order of this Court.
Done by the Court, to which I certify.—Memije. Before me.
Franco R. Cruz.—On this eighteenth day of September, 1900, I
certify that the check for three thousand three hundred and three
dollars, local currency, drawn by the purchaser at the execution sale,
Francisco Saez on the Spanish Filipino Bank, dated the tenth in-

stant, and deposited by him in this Court as one of the prospective bidders at the proposed sale at public auction of the property attached, with the certificate of the Bank indorsed upon it, bears numbers 51 and 5759.—R. Cruz.—On this nineteenth day of September, 1900, Pablo Antonio Martinez was notified of the foregoing order and upon receipt of a copy of same, signed hereon, to which I certify.—Martinez.—R. Cruz.—On this nineteenth day of September, 1900, Don Jose Felix Martinez was notified of the foregoing order and upon receipt of a copy of same signed hereon, to which I certify. Felix Martinez.—R. Cruz.—Liquidation of Charges. I hereby certify, this nineteenth day of September, 1900, that the property sold at public auction in these proceedings, and known as the Old Theater, situated on Calle Dasmariñas, District of Binondo, has no charge or perpetual lien upon it, but only a mortgage in favor of the Junta Administradora de Obras Pías, which was created by and instrument executed on the twenty-third of April, 1879, before the Notary Public Francisco Hernandez y Fajarnes by Don Antonio Enriquez to secure a loan of ten thousand dollars, local currency, at six per cent. per annum, which said loan according to the general manager of the said Junta Administradora de Obras Pías had been reduced to the sum of eight thousand, eight hundred and thirty-four dollars and thirty-one cents, local currency, including interest due thereon, six thousand nine hundred and ninety-five dollars of which represents the principal and one thousand seven hundred and thirty-three dollars and ninety-eight cents the interest due for the
182 years 1896 to 1899, and one hundred and five dollars and twenty-four cents, court costs, according to the examination which I have made of the record of this action. R. Cruz. Manila, September 19th, 1900. Order. Let the parties and the purchaser, Francisco Saez, be given three days' notice of the foregoing liquidation that they may take such steps as they see fit. Done by the Court, to which I certify. Memije. Before me, Franco. R. Cruz.—Manila, this nineteenth day of September, 1900. Pablo Antonio Martinez was notified by me of the foregoing order and upon receipt of a copy thereof, signed hereon, to which I certify.—Martinez. R. Cruz.—In Manila, this nineteenth day of September, 1900, Jose Felix Martinez was notified of the foregoing order, and upon receipt of a copy of same, he signed hereon, to which I certify. Felix Martinez.—R. Cruz.—I hereby certify that in compliance with the order of the thirtieth of August last, the power of attorney appearing at pages 99 to 106 was detached from the record and there was substituted therefor a copy of the same. R. Cruz.—In Binondo this twentieth day of September, 1900, I delivered to Felipe Calderon the power of Attorney detached from the record as aforesaid, and upon receipt of same he signed hereon, to which I certify.—Felipe G. Calderon. R. Cruz.—I Certify that on this twentieth day of September, 1900, in compliance with the order of the 17th instance the power of attorney appearing at pages 49 to 54 was detached from the record and a copy thereof was substituted for it. R. Cruz.—In Binondo, this twentieth day of September, 1900, I delivered to Pablo Antonio Martinez the power of attorney detached from the record as

aforesaid, and upon receipt of same he signed hereon, to which I certify.—Martinez.—R. Cruz.—Notification. In Manila, this twentieth day of September, 1900, the foregoing order, dated yesterday, was served by me on Francisco Saez, who upon receipt thereof, signed hereon, to which I certify.—F. S. Co-Tiongco. R. Cruz.—

183 On the same date Francisco Saez stated that he waived the notice given him, as he had no objection to the liquidation as made, to which I certify.—F. S. Co-Tiongco. R. Cruz.

To the Court of First Instance of Intramuros. Jose Felix Martinez as Attorney and Counsel for Francisco Enriquez y Villanueva, the testamentary executor of the deceased Antonio Enriquez y Sequera, in the executive action instituted in this court by Florencia de Victoria y Mendoza as testamentary executrix of her deceased husband, Jose Moreno Lacalle, appears and states: That I have been notified of the liquidation of the charges as made by the Clerk, and having no objection thereto, I approve of the same and request the Court that upon consideration thereof it be approved, directing that the purchaser deposit into Court the purchase price of the property within a short time., Manila, September twentieth, 1900. Fees, \$15. Felix Martinez.—To the Court of First Instance of Intramuros. Pablo Antonio Martinez, as attorney and counsel for Florencia de Victoria y Mendoza, the testamentary executrix of her deceased husband, Jose Moreno Lacalle in the executive action instituted by me in this Court against the estate of Antonio Enriquez y Sequera, appears and states: That I have been notified of the liquidation of the charges made by the Clerk and having no objection thereto, I ask the Court to approve the same, directing that the purchaser of the property pay the money into this Court within a reasonable time. Manila, September twentieth, 1900. P. Antonio Martinez, Attorney at Law. Fees, \$15.—Manila, September 21st, 1900. Order. Upon consideration of the foregoing petitions, let the same be attached to the record to which they belong, the statements that they have no objection to the liquidation in question is noted and let the purchaser be required to pay the purchase price into this

184 Court within a reasonable time. Done by the Court, to which I certify. Memije. Before me, Franco R. Cruz.

Notification. In Binondo, this twenty-third day of September, 1900, Pablo Antonio Martinez was notified of the foregoing order and upon receipt of copy of same, he signed hereon, to which I certify. Martinez. R. Cruz.—Notification. In Manila, this twenty-first day of September, 1900, Jose Flix Martinez was notified of the foregoing order and upon receipt of copy of same, signed hereon, to which I certify. J. Felix Martinez. R. Cruz.—In Santa Cruz, this twenty-first day of September, 1900, Don Francisco Saez was notified of the foregoing order and duly informed of the direction contained therein, and upon receipt of copy of said order he signed hereon, to which I certify.—F. S. Co-Tiongco. R. Cruz.—I certify that on this twenty-first day of September, 1900, in compliance with the foregoing order of the 17th instant, the power of attorney appearing at pages 72 to 77 of the record was detached therefrom and a copy thereof sub-

stituted in its stead.—R. Cruz. Manila, September twenty-first, 1900. I delivered to Jose Felix Martinez the power of attorney detached from the record, and upon receipt of same he signed hereon, to which I certify.—Felix Martinez. R. Cruz.

I, Eustaquio V. de Mendoza, Clerk of the Court of First Instance of the District of Tondo, do hereby certify that in the action instituted by Pablo Antonio Martinez against Francisco Enriquez as testamentary executor and administrator of the estate of Antonio Enriquez and Ciriaca Villanueva, deceased, to recover a sum of money for attorney's fees, an order was made by the Court at page 15 of the record, which order is as follows: "Order. By the Honorable Judge Memije. Court of First Instance of Binondo. Manila, September tenth, 1900. Upon consideration of the foregoing petition, let it be attached to the record to which it belongs, and in

conformity with the prayer thereof, the same is granted.
185 and the action in which the property in question was attached being under the jurisdiction of the undersigned, an

order having been heretofore entered directing that the said property be sold, let the sum of seven thousand, one hundred and forty-one dollars and seventh-six cents, local currency, be deducted and retained from the proceeds of the sale to answer the result of these proceedings, and for this purpose let a certificate copy of this order be attached to the record of the action in question when the matter will be brought up for action, the Clerk who has charge of the said record should also be served with a copy of this order. Done by the

Court, to which I certify.—Memije. Before me, Eustaquio V. de Mendoza. The foregoing is a true copy of its original appearing on page — of the record, to which I certify; and in compliance with the order of the Court I sign these presents this 12th day of September, 1900. Eustaquio V. de Mendoza.—I certify that on this twenty-fourth day of September, 1900, the foregoing certified copy was delivered to me by my colleague, Eustaquio V. de Mendoza.—R. Cruz.—Manila, September 24th, 1900. Let the foregoing certified copy be attached to the record to which it belongs. Done by the

Court, to which I certify.—Memije.—Before me, Franco R. Cruz. Notification. This 24th day of September, 1900, Don Pablo Antonio Martinez was notified of the foregoing order and upon receipt of a copy of the same, signed hereon, to which I certify. Martinez. R. Cruz.—Notification. This twenty-fourth day of September, 1900, Jose Felix Martinez was notified by me of the foregoing order and upon receipt of copy of same, signed hereon, to which I certify. J. Felix Martinez. R. Cruz. Appearance. In the

Court of First Instance of Binondo, this twenty-eight day of September, 1900, before the Judge and in the presence of the Clerk, personally appeared the Chinaman Francisco Saez Co-Tiongco, who paid into Court the sum of thirty thousand, six hundred and

186 twelve dollars, which with the three thousand three hundred and three dollars previously deposited makes a total of thirty-three thousand nine hundred and fifteen dollars, local currency, this in compliance with the order of the 21st instance, said amount representing the purchase price of the property sold at public auction,

known as the "Old Theater", and thereupon he prayed the Court to consider the said amount fully paid, signing hereon immediately after the Judge, to which I certify.—Memije.—F. S. Co-Tiongco.—Franco R. Cruz. Manila, September 28th, 1900. Order. The said sum of thirty thousand six hundred and twelve dollars, local currency, having been paid into Court to wait the result of these proceedings, let the same be deposited in the Monte de Piedad; let the mortgage in favor of the Junta Administradora de Obras Pias which exists upon the property be paid out of the said amount, and for this purpose an order will be issued to the General Agent of the said Junta, Don Jose de la Rosa, directing him to surrender into this Court the title deeds of the said property attached as aforesaid within three days, and upon the cancelation of said mortgage the said Francisco Enriquez, as testamentary executor and administrator of the estate of Antonio Enriquez, shall be directed to, within three days, execute the necessary conveyance of the property thus sold. The two certified copies delivered by the Clerk Eustaquio Villablanca de Mendoza shall be united to the record, and upon consideration thereof there will be deducted from the amount deposited as aforesaid the sums mentioned in the said copy, and paid to the Attorney Pablo Antonio Martinez.—Done by the Court, to which I certify.—Memije.—Before me, Franco. R. Cruz. Notification. This 28th day of September, 1908. Don Jose Felix Martinez was notified of the foregoing order and upon receipt of a copy of same, signed hereon, to which I certify.—J. Felix Martinez, R. Cruz.—This 28th day of September, 1900. Pablo Antonio Martinez was duly notified by me of the foregoing order and upon receipt of a copy of same, he signed hereon, to which I certify.—Martinez.—R. Cruz.

I, Eustaquio Villablanca de Mendoza, Clerk of the Court of First Instance of the District of Tondo, do hereby certify that in the action pending in this Court wherein Pablo Antonio Martinez is plaintiff, for the recovery of certain attorney's fees, the following order and liquidation proceedings appear: "Order. By the Honorable Judge Memije of the Court of First Instance of the District of Binondo, Manila, September 24th, 1900. Upon consideration of the foregoing petition, let the same be attached to the record to which it belongs and in view of the result of the foregoing demand and the provisions of section 1463 of the Code of Civil Procedure, let the Attorney, Pablo Antonio Martinez be paid the amount claimed in this action, and such costs as may have been incurred therein, from the proceeds of the sale of the property known as the "Old Theater", and in order that such payment may be made, let a certified copy of this order be issued, with a note as to the amount claimed, and the costs to which the party is entitled, and let the same be delivered to the Clerk who took part in the proceedings relating to the sale of the said property, with a copy of this order. Done by the Court, to which I certify.—Memije. Before me, Eustaquio V. de Mendoza."—I hereby certify that having proceeded to tax the costs in this case, including the fees to which I am entitled for this service and for the certified copy to be forwarded to the

Court of First Instance of Binondo and of the notice sent to the Clerk, Mr. Cruz, the following is the result: To Attorney Pablo Antonio Martinez for fees and paper furnished by him \$4888.30.—To the Government Treasury for my fees \$8.09.—Total \$4896.39. September 26th, 1900, to which I certify.—Eustaquio V. de Mendoza.

188 The foregoing is a true copy of the originals to which they refer, and I so certify, and in compliance with the orders of the Court, I sign these presents in Manila, this 26th day of September, 1900. Eustaquio V. de Mendoza.—I, Eustaquio Villablanca de Mendoza, Clerk of the Court of First Instance of the District of Tondo of this City, do hereby certify that in the proceedings instituted by Attorney Pablo Antonio Martinez to recover certain attorney's fees, the following order and liquidation of costs appear:—"Order. By the Honorable Judge Memije.—Court of First Instance of the District of Binondo.—Manila, September 24th, 1900. Upon consideration of the foregoing petition, let the same be attached to the record to which it belongs and in view of the provisions of section 1463 of the Code of Civil Procedure, let the Attorney, Pablo Antonio Martinez be paid the amount claimed in this action, and such costs as may have been incurred therein, from the proceeds of the sale of the property known as the "Old Theater", and in order that such payment may be made, let a certified copy of this order be issued, with a note as to the amount claimed, and the costs to which the party is entitled, and let the same be delivered to the Clerk who took part in the proceedings relating to the sale of the said property, with a copy of this order. Done by the Court, to which I certify.—Memije. Before me, Eustaquio V. de Mendoza." I hereby certify that having proceeded to tax the costs in this case, the following is the result: To Attorney Pablo Antonio Martinez for fees and paper furnished by him \$6986.76. To the former Clerk of this Court Jose Moreno Bueso for his services \$7.17. To Ambrosio Fuentes for his services \$5.11. To the Treasurer for my services, including my fees for this certificate and the notice to the Clerk, Mr. Cruz, also the certified copy to be forwarded to the Court of

First Instance of Binondo, \$7.79.—Reimbursement for 189 stamped paper \$3.00.—Total, \$7019.83. September 26, 1900.

I so certify.—Eustaquio V. de Mendoza. The foregoing is a true copy of the originals to which they refer, and in compliance with the order of the Court, I sign these presents in Manila, this 26th day of September, 1900. Eustaquio V. de Mendoza.—Manila, September 29th, 1900. I certify that I have on this day delivered and paid to Pablo Antonio Martinez, in compliance with the foregoing order, the sum of twelve thousand, nine hundred and sixteen dollars and twenty-two cents, who upon receipt of same, signed hereon, to which I certify.—Martinez. R. Cruz.—In Manila, this first day of October, 1900. The foregoing order was served upon Jose de la Rosa as the General Manager of the Junta Administradora de Obras Pias of this City, who was also informed of the direction contained therein, and on receipt of a copy of same, signed hereon, to which I certify.—Jose de la Rosa.—R. Cruz.—Note. On the 29th of September, 1900, a letter was sent to the Director of the Monte de

Piedad enclosing the sum of twenty-one thousand nine hundred and ninety-eight dollars and seventy-eight cents, represented by a check on the Spanish Filipino Bank, duly certified.—R. Cruz.—To the Court of First Instance of Binondo, I, Pablo Antonio Martinez as attorney and counsel for Florencia Victoria the widow and testamentary executrix of her deceased husband as plaintiff in the executive action by her instituted against the estate of the deceased Antonio Enriquez, appear and state to the Court: That the purchaser of the property sold at public auction, having paid the purchase price, to satisfy the judgment rendered in favor of my client an order should be entered in conformity with the provisions of section 1463 of the Code of Civil Procedure, directing that my client be paid the amount due her from the estate of Antonio Enriquez, after liquidation of the interests and taxation of costs, wherefore I pray the Court that upon consideration of this petition an order be entered directing that my client be paid the amount due her. Manila, September 28th, 1900. (Signed) Pablo Antonio Martinez. Fees, \$8.00, Manila, October 1, 1900.

Order. Upon consideration of the foregoing petition it is ordered that the same be attached to the record to which it belongs, and the Clerk is hereby directed to tax the costs and make a liquidation of the interest due upon the amount claimed, and this done, he will report the same to the Court. Done by the Court to which I certify.—Memije. Franco. R. Cruz.—Notice. Upon this first day of October, 1900, Pablo Antonio Martinez was notified of the foregoing order, and upon receipt of a copy of same, he signed hereon, to which I certify.—Martinez. R. Cruz.—Notice. On this first day of October, 1900, Don Jose Felix Martinez was notified of the foregoing decision, and upon receipt of a copy of the same, signed hereon to which I certify. J. Felix Martinez. R. Cruz.—The Under-signed, in compliance with the order of the Court proceeds to tax the costs in the present action as follows: Costs due to Jose Moreno Lacalle, represented by his widow Florencia Victoria, which should be paid by Francisco Enriques as testamentary executor of the deceased Antonio Enriquez, and administrator of the latter's estate, pages 1 to 71 of the record.—To the undersigned for services rendered, 54 pages at five cents, ten orders at \$.63, section 78, two assignments at \$.50, section 154, thirty-two notices outside of Clerk's office at \$1., section 83, two citations at \$1., section 83, filing a petition at night \$.57, section 92, and 345 pages of testimony at \$.75, article 108, two deliveries at \$1.25, section 104, one order, four sheets, at \$.75, section 79, copy, ten pages, at \$.38, section 88 four writs at \$.50, section 112, three notes at \$.38, section 92 three orders at \$1.00, section 83, attachment, one hour, at \$2.50, section 127, one page inserted, \$.38, section 113, one order, two sheets \$.75, section 79; one judgment, four sheets at \$.75, section 79; one public notice, \$1., section 80; three answers at \$.38, section 89; two notices at \$1., section 83; 16 reimbursements notes, \$2.07, sections 93 and 94; three appearances in court at \$2., section 121; one ratification, \$.50, section 109; custody of record for ten months at \$1., section 137; total \$91.60.—To the Ba-liff, Simon

de la Rosa: To one summons, \$.50, section 145; attachment, one hour, \$1., section 144; total \$1.50: To the solicitor, Jose Crispulo Reyes, fees for preparation of petitions pages 6, 10, 14, 26 and 30 of the record, nine notifications at \$.50, section 303, one note \$.25, section 298; one delivery at \$1., section 308; and custody of the record for seven months at \$.75, section 320; total \$43.48.—To the Government, pages 90 to 96, 111 to 113, 130 to 136, 138 to 139, 146 to 153, 153 to 154, and 158—To the undersigned for services rendered as follows: 15 pages at \$.05, section 62; one order, two sheets at \$.75, section 79; 14 notices outside of Court at \$1., section 83; copy, two pages at \$.38, section 88; one consultation \$.50, section 112; two pages of testimony at \$.50, section 112; ten orders at \$.63, section 78; three edicts at \$.07 section 91; two communications at \$.50, section 112; one note, \$.38, section 92; insertion, two sheets, at \$.38, section 113; custody of record for three months at \$1.00, section 137; 24 deposits in the Clerk's Office at \$2.00, section 100; one attachment proceeding at \$2., section 121; seven pages of testimony at \$.50, section 112; three answers at \$.38, section 89; thirteen notices in the Clerk's Office at \$.50, section 82; two appearances before the Court at \$2., section 121; one certified copy, \$.50; section 112; one liquidation of charges, \$.08; ten pages, section 131; one certificate, \$.75, section 96; one delivery out of court, \$1.25, section 105; one delivery in the Clerk's Office, \$.75; section 102; two deliveries out of court, at \$4.25; total \$108.72. To Attorney Pablo Antonio 192 Martinez; Fees paid by him for 12 sheets of stamped paper \$12.—To the expert Abelardo Lafuente, for services rendered in the appraisal of the property attached and sold at public auction on the 10th of September last, page 149 of the record \$204.48.—To Attorneys Alfredo Chicote, Gonzalo Cespedes, Antonio Sanz, Jose Moreno Lacalle, Pablo Antonio Martinez for services rendered as per bill, page 147, reimbursement for paper furnished by said Martinez, also bill of the Registrar of property paid by him, \$203.—To the said Pablo Antonio Martinez for services rendered by him, \$687.—Costs due Jose Felix Martinez as counsel for Francisco Enriquez—to the undersigned for services rendered, 16 pages at \$.05, section 72, one order, three pages, \$.75, section 79; five notifications outside of Office, at \$1., section 83; copy, four pages, at \$.38., section 88; one consultation, \$.50, section 112; certified copy ten pages at \$.50, section 112; two orders at \$.63, section 68; two notices at \$.50, section 82; one certificate \$.75, section 96; one delivery, \$1.25, section 104, total \$19.33.—Costs; common to Pablo Antonio Martinez and Jose Felix Martinez. To the undersigned for services rendered, \$3.73—To the said Jose Felix Martinez for services rendered pages 85, 145 and 155, \$36.—For three sheets of stamped paper, \$3., Total, \$62.06; costs to be paid by Rafael Enriquez, pages 97 to 110, 140 to 144, and 153. To the undersigned for services rendered 28 pages at \$.05, section 72; one note \$.38, section 92; one acknowledgment of receipt \$.50, section 119; two orders at \$.63, section 78; six notifications out of court at \$1., section 83; one notice \$1., section 83; one order, two pages at \$.75, section 79; one certificate \$.75, section 96; one delivery out of court, \$1.25, section 104; total \$17.04.—Costs

common to Rafael Enriquez and Nazario Constantino in behalf of Antonio Gascon y Enriquez:—To the undersigned for services rendered \$7.89, total \$24.93: Manila, October 2nd, 1900.

193 Signed Franco. R. Cruz.—Liquidation of interest: I hereby certify in compliance with the order of the Court that I have proceeded to liquidate the interest on the amount claimed in this action as follows: On January 30th, last, Don Francisco Enriquez was called upon to pay the sum of \$6,290, claimed in this action, which said sum from that date and until the thirtieth of September, last, has accrued interest in the sum of \$629, at the rate of six per cent per annum. October 2nd, 1900. R. Cruz. Manila, October 2, 1900. Order. Let the parties be given three days' notice of the foregoing taxation of costs and liquidation of interest, and they may examine the record on file in the Clerk's office and may state, upon being served with notice of this Order whether they have any objection to such taxation. Done by the Court, to which I certify. Memije. Before me, Franco. R. Cruz.—There has been deposited in this Charitable Institution the twenty-one thousand nine hundred and ninety-eight dollars and seventy-eight cents which your Honor forwarded through the Clerk of that Court, Francisco R. Cruz, to await the result of the executive action instituted against the estate of Antonio Enriquez, which will be held subject to the order of that Court. Manila, October 1st, 1900. Emilio Moreta.—To the Court of First Instance of the District of Binondo, Manila. Notification. Manila, this second day of October, 1900, the foregoing order was served upon Pablo Antonio Martinez, who upon receiving a copy thereof signed hereon, to which I certify.—Martinez. R. Cruz.—Notification. In Manila, this second day of October 1900, Jose Felix Martinez was notified by me of the foregoing order and upon receipt of a copy of same, signed hereon, to which I certify. Martinez.—R. Cruz.—In the Court of First Instance of Binondo, this third day of October, 1900, before the Judge and in the presence of the undersigned clerk, personally appeared Jose de la Rosa, General Agent for the 194 Junta Administradora de Obras Pias, and exhibited the title deeds of the property sold at public auction, known as the "Old Theater", which said title deeds consist of 21 pages, in compliance with the order of the Court. Memije.—Jose de la Rosa.—Franco. R. Cruz.—To the Court of First Instance of Intramuros. Jose Felix Martinez, as attorney and counsel for Francisco Enriquez y Villanueva, the testamentary executor of his deceased father, Antonio Enriquez, in the executive action instituted in this Court by Florencia de Victoria y Mendoza, against the estate represented by my client, respectfully appears and states, that Don Francisco Enriquez has been ordered to within three days execute the deed of transfer of the property attached in this action and subsequently sold at public auction. Now, pursuant to instructions from my client I beg to state to the Court that he waives the time allowed him for that purpose and that it is his desire that the deeds be executed by the Court. Wherefore, I pray that upon consideration of this petition the Court will direct that the deed be executed in the manner requested. Manila, September, 29, 1900. J. Felix Martinez, Attorney-

at-Law. Fees and consultation, \$25.—To the Court of First Instance of Intramuros. Jose Felix Martinez, as attorney and counsel for Francisco Enriquez, the testamentary executor of Antonio Enriquez y Sequera, in the executive action instituted against him by counsel for Florencia de Victoria y Mendoza, appears and represents: That yesterday he was notified of the order of this Court directing that the taxation of costs and liquidation of interest made by the Clerk of this Court be submitted to him for examination. Now, having examined the same, that is to say, the liquidation and the taxation of costs, he has no objection thereto. Wherefore, he prays the Court that upon consideration of this petition and in view of the fact that he has no objection to the taxation of the costs and

the liquidation an order be entered approving the same
 195 Manila, October 3rd, 1900. Jose Felix Martinez.—To the Court of First Instance of the District of Intramuros. Pablo

Antonio Martinez as attorney and counsel for Florencia de Victoria y Mendoza, testamentary executrix of her deceased husband, Jose Moreno Lacalle in the executive action instituted by me in this Court against the estate of Antonio Enriquez y Sequera, appears and represents: That the taxation of costs made in this action has been submitted to him for examination, and having no objection thereto, he prays the Court to approve the same, as well as the liquidation of interest, directing that the parties — interest therein be paid their respective shares. Manila, October 3rd, 1900. P. Antonio Martinez, Attorney at law.—Manila, October 3rd, 1900. Order. It appearing from the foregoing petition that neither counsel for the judgment creditor or the judgment debtor have made any objection to the taxation of costs and liquidation of interest upon the amount claimed, as made by the Clerk of the Court, and it appearing that by a petition filed herein by counsel for the judgment debtor on the 29th of September, last, it was requested that this Court execute the deed of transfer of the property sold under execution, and considering that the taxation of costs and liquidation of interest have been made in accordance with law, and that in view of the fact that the judgment debtor has refused to execute the deed of transfer in favor of the purchaser it becomes the duty of the Court under paragraph two of section 1496 to do so, the Hon. Jose Memije, Judge of the Court of First Instance of Binondo by reglamentary substitution, before me the Clerk said: The taxation of costs and liquidation of interest herein made are approved; let the amount claimed in this proceeding, together with the costs and interest thereon be paid out of the proceeds of the sale of the property, also the amount of the loan secured by mortgage thereon in favor of the Obras Pias, to wit, eight thousand eight hundred and thirty-four dollars and thirty-one cents, as appears from the title deeds submitted by Jose de

196 la Rosa. There shall also be paid out of the proceeds of the sale any other costs due, and for this purpose the necessary orders will be issued to the Director of the Monte de Piedad so that the aforesaid amount may be deducted from that deposited in the said Monte de Piedad, and let the deed of transfer of the property sold under execution be executed in the presence of the notary

public Calixto Reyes, and the said Jose de la Rosa is hereby directed to execute a deed canceling the said mortgage. Done by the Court, to which I certify. Jose Memije. Before me, Franco, R. Cruz.—Notification. In Manila, this third day of October, 1900, Don Pablo Antonio Martinez was notified of the foregoing order and upon receipt of copy of same, signed hereon, to which I certify. Martinez, R. Cruz. Notification. In Manila, this third day of October, 1900, Don Jose Felix Martinez was notified by me of the foregoing order and upon receipt of a copy of same, signed hereon, to which I certify. J. Felix Martinez. R. Cruz.—I certify that on this fourth day of October, 1900, having proceeded to tax the additional costs in this case, I find that they amount to the sum of ninety-seven dollars and ninety-cents, as follows: To the Clerk, \$27.90, including the delivery of the money to the parties interested and the delivery of the record to the notary public for the execution of the conveyance, and \$50. to Jose Felix Martinez for the filing of the petition pages 174 and 175, and \$20. to Pablo Martinez as his fees for the preparation of the petition appearing at page 176 and one sheet of paper. R. Cruz.—This fourth day of October, 1900. In compliance with the foregoing order of the Court an order was issued to the Monte de Piedad directing that Don Jose de la Rosa be paid the sum of eight thousand, eight hundred and thirty-four dollars and thirty-one cents, and Francisco R. Cruz the sum of seven thousand seven hundred and sixty-seven dollars and fifteen cents, to which I certify. R. Cruz.—I certify that on this fifth day of October, 1900, I received from the Monte de Piedad the sums referred

197 to above, whereupon I delivered to Attorney Pablo Antonio Martinez as attorney and counsel for Florencia Victoria y Mendoza thirteen thousand three hundred and eighty-two, receiving a receipt therefor.—Martinez. R. Cruz.—Delivery.—In Binondo, this 8th day of October, 1900, the record of this case was delivered by me to the Notary Public Calixto Reyes, who upon receipt of same specified the number of pages, and signed hereon, to which I certify. C. Reyes.—R. Cruz.—In the Court of First Instance of Binondo, this 12th day of October, 1900, before the Hon. Judge of this Court, the Clerk being present, personally appeared Francisco Saez Co-Tiongco, and stated to the Court that a deed of transfer of the property sold at public auction having been executed, he asked that he be given possession of the same upon notice to the occupants thereof. Whereupon the said Cotiongco signed with the judge, to which I certify. Memije. F. S. Co-Tiongco. Franco, R. Cruz.—Manila, this 12th day of October, 1900. Upon consideration of the petition of the Chinaman Francisco Saez Co-Tiongco, it is ordered that he be given possession of the property sold at public auction, the deed of judicial sale having already been signed by me, such possession to be given by the bailiff of this Court in the presence of the Clerk, who shall notify the occupants of the premises accordingly. Done by the Court, to which I certify. Memije. Before me, Franco, R. Cruz.—In Manila, this 12th day of October, 1900, Jose Felix Martinez was notified by me of the foregoing order, and upon receipt of a copy thereof, signed hereon, to which I certify. J.

Felix Martinez. R. Cruz.—In Manila, this 12th day of October, 1900, Pablo Martinez was notified of the foregoing order and upon receipt of copy of same, signed hereon, to which I certify.—Martinez. R. Cruz.—Calle Dasmariñas, District of Binondo, at four o'clock P. M., this 12th day of October, 1900, the bailiff, Catalino de la Cruz, assisted by me the undersigned Clerk, went upon the premises known as the "Old Theater" and the Chinaman Francisco Saez Co-Tiongco being present for the purpose of taking possession of the same, he walked with him through the various rooms of the building, enquiring who the tenants were, and executing other acts of dominion to show actual possession, whereupon the said bailiff and the Chinaman Co-Tiongco, signed hereon, to which I certify.—Catalino de la Cruz. F. S. Co-Tiongco. Franco. R. Cruz.—This twelfth day of October, 1900, the bailiff Catalino de la Cruz introduced to the tenant Elias Martinez Nubla, the Chinaman Francisco Saez Co-Tiongco, as the owner of the property of which possession had just been given. (Signed) Catalino de la Cruz. R. Cruz.—This 12th day of October, 1900, the bailiff Catalino de la Cruz, introduced to the tenants O-Queng, Ung-Sing, Go-Poco, Ui-Seco, Tio-Pi, San-Tiao and A Nua, the Chinaman Francisco Saez Co-Tiongco, as the owner of the property of which possession had just been given, whereupon they all signed hereon. Catalino de la Cruz. R. Cruz.—This 12th day of October, 1900, the bailiff, Catalino de la Cruz introduced to the tenants Song-Quiat, Chang Tengco, By-Puico, Sui-Teco, Dy Quico, Su-Sibo, Tan-Cot and Ang Sesece, the Chinaman Francisco Saez Co-Tiongco, as the owner of the property of which possession had just been given, whereupon they all signed hereon, with the exception of the last four, Marcos Bautista having signed at their request. Catalino de la Cruz. Marcos Bautista. (Signatures of Chinese) R. Cruz.—The Executive Branch of the Supreme Court of Justice of the Philippine Islands on the 27th of October last, resolved as follows: Upon consideration of the foregoing communication of the Judge of the Court of First Instance of the District of Tondo, the Hon. Hipolito Magsalin, stating that he has abstained from all further intervention in the action instituted by the estate of Jose Moreno Lacalle against Francisco Enriquez to recover a sum of money on account of his having been charged by the latter with the commission of a crime, Resolved: That in view of the fact that the grounds upon which the Court below bases its abstention from any further intervention in the said cause no longer exists, his decision is overruled, and it is ordered that this notice of this resolution, and let a copy of the decision of the criminal branch of this Court be attached to this record; all of which I have the honor to transmit to you for your information and guidance. Manila, November 5th, 1900. Higinio Benites.—To the Judge of the Court of First Instance of Tondo, Hipolito Magsalin. Manila, November 10th, 1900. Order. It is ordered that the resolution of the Executive Branch of the Supreme Court of Justice of these Islands, transmitted with the foregoing letter, be complied with and a copy of the same sent to the Judge of the Court of First Instance of Binondo, who is at present taking cognizance of the case in ques-

tion. Done by the Court. Hipólito Magsalin. Before me, Franco R. Cruz. Note. This second day of November, 1900, a communication was sent to the Judge of the Court of First Instance of Binondo, forwarding the communication of the Supreme Court. R. Cruz.—This third day of November, 1900. Don Jose Felix Martinez was notified by me of the foregoing order and upon receipt of copy of same, signed hereon, to which I certify. Jose Felix Martinez. R. Cruz. I certify that having called upon Antonio P. Martinez for the purpose of notifying him of the foregoing order, I was unable to do so, he having gone to Spain. R. Cruz.—Manila, November 13th, 1900. Order. In view of the foregoing Certificate of the Clerk, let the notice of the foregoing order be served upon Florencia de Victoria y Mendoza. Done by the Court, to which I certify. Magsalin. Before me, Franco. R. Cruz. In Binondo, this fifteen day of November, 1900. The foregoing order was served upon Jose Felix Martinez, who being duly informed thereof, signed hereon, to which

I certify. J. Felix Martinez. R. Cruz. Notification. In 200 Binondo, this fifteenth day of November, 1900, Doña Florencia Victoria was notified by me of the foregoing order, and upon receipt of same, she signed hereon, to which I certify. F. Viuda de Moreno Lacalle—R. Cruz.—In the executive action instituted in this Court by Mr. Josiah M. Vah against Francisco Enriquez as the testamentary executor of Antonio Enriquez, deceased, to recover a sum of money, I, the undersigned, ordered on the 19th instant that a communication be sent to you requesting, as I do hereby request, that you hold, subject to the order of this Court, any balance remaining from the proceeds of the sale of the property known as the "Old Theater", which was sold in the executive action instituted by the testamentary executrix of Jose Moreno Lacalle against Antonio Enriquez' estate to satisfy the sum of two thousand dollars and costs, the said balance having been attached in the action in question. Manila, December 24th, 1900. Jose Basa.

Court of First Instance of Intramuros.—To the Court of First Instance of Tondo, wherein is pending the executive action brought by the testamentary executrix of the deceased Jose Moreno Lacalle against Francisco Enriquez as testamentary executor of the deceased, Antonio Enriquez, to recover a sum of money.—Manila, December 26th, 1900. Order. It is ordered that the foregoing communication from the Judge of the Court of First Instance of Intramuros, Hon. Jose Enriquez be attached to the record, and without prejudice to the jurisdiction of the undersigned, it is ordered that any balance remaining to the extent of the amount therein referred to be retained subject to the order of the Judge of that Court, and let the parties be notified of this order and notice thereof given to the said Judge. Done by the Court, to which I certify. Magsalin. Before me,

Franco. R. Cruz.

201 In Manila, this 27th day of December, 1900, Jose Felix Martinez was notified by me of the foregoing order and upon receipt of copy of same, signed hereon, to which I certify. J. Felix Martinez. R. Cruz.—To the Court of First Instance of — Don

Jose Felix Martinez, as attorney and counsel for Francisco Enriquez in the executive action against him, instituted by the deceased, Jose Moreno Lacalle, appears and represents: that on this day, and with the approval and consent of Francisco Enriquez, he has ceased to be his attorney in fact, and prays the Court that a note be entered to this effect and the said Francisco Enriquez notified accordingly. Manila, January 4th, 1901. J. Felix Martinez, Attorney at Law.—Manila, January 8th, 1901. Order. Upon consideration of the foregoing petition, it is ordered that the same be attached to the record to which it belongs, and Mr. Martinez' request that he be no longer considered as attorney and counsel for Francisco Enriquez is granted, and let the said Francisco Enriquez be notified accordingly. Done by the Court, to which I certify. Magsalin. Before me, Franco. R. Cruz.—On this eighth day of January, 1900, I notified Jose Felix Martinez of the foregoing order and upon receipt of a copy of same, he signed hereon to which I certify.—Jose Felix Martinez, R. Cruz.—On this 23rd day of January, 1901, I notified Francisco Enriquez of the foregoing order and upon receipt of a copy of same, he signed hereon, to which I certify. F. Enriquez. R. Cruz.—In the executive action instituted in this Court by Attorney Josiah M. Vah against Francisco Enriquez as testamentary executor of the deceased, Antonio Enriquez, to recover a sum of money, an order was entered by the Court as follows: "Court of First Instance of Intramuros, this twenty-fifth day of January, 1901.

Order. Upon consideration of the foregoing petition, it is
202 ordered that the same be attached to the record to which it belongs, the supplementary prayer is granted, and it is directed that a communication be sent to the Court of First Instance of the District of Tondo, wherein the executive action instituted by the executrix of Jose Moreno Lacalle against Francisco Enriquez the testamentary executor of the deceased Antonio Enriquez is pending, requesting the said Court to pay to the Attorney Mr. Josiah M. Vah, out of the proceeds of the sale of the property known as the "Old Theater," belonging to the said Enriquez estate, the sum of two thousand and thirty-eight dollars and fifty-two cents, the amount claimed in this action, together with costs and additional costs, not including the amount of the bill at page 22 of the record, and the Clerk will certify as to the amount of the additional costs. Done by the Court, to which I certify. Basa.—Franco. R. Cruz.—All of which I have the honor to transmit to you, that the proper order may be made directing that out of the proceeds of the sale of the property belonging to the said estate, known as the "Old Theater," Mr. Josiah M. Vah may be paid the said sum of two thousand thirty-eight dollars and fifty-two cents, he having paid into the Clerk's Office the amount of the costs and additional costs therein. Please notify me of your action in the premises. Manila, January 26, 1901. Jose Basa.—To the Court of First Instance of the District of Tondo, Manila, January 26, 1901. Order. Ordered: that the foregoing communication be attached to the record to which it belongs, and without prejudice to the jurisdiction of the undersigned, let a communication be sent to the

Director of the Monte de Piedad directing him to pay to the Attorney, Mr. Josiah M. Vah, out of the balance remaining out of the amount of twenty-one thousand nine hundred and ninety-eight dollars and seventy-eight cents deposited in the said Monte de Piedad, subject to the order of this Court, the sum of two thousand thirty-eight dollars and fifty-two cents, the balance then remaining to be retained subject to the result of this action.—It

203 is further ordered that the Hon. Jose Enriquez, Judge of the Court of First Instance of Intramuros, be notified of this order. Done by the Court, to which I certify.—Magsalin.—Before me, Franco. R. Cruz.—I have the honor to inform you that your order of the 26th instant has been complied with, by delivery to the attorney, Mr. Josiah M. Vah, the sum of two thousand and thirty-eight dollars and fifty-two cents out of the sum deposited by that Court in this institution subject to the result of the executive action instituted by Jose Moreno Lacalle against Francisco Enriquez as testamentary executor of Antonio Enriquez, as per receipt on file. Manila, January 28, 1901.—Emilio Moreta. To the Judge of the Court of First Instance of Tondo, Manila.

EXHIBIT "L."

There are on file in this Registry of Property for the Northern District two notices signed by Attorneys Montagne and Dominguez relating to two actions, one of them instituted by Rafael Enriquez against Francisco Enriquez et al., in re nullity of title of property numbered 76 to 84 Calle Numancia, and the other by the said Rafael Enriquez et al. against Francisco Saez Co-Tiongco, et al., in re nullity of title to the property known as the "Old Theater." Manila, May 2, 1902.—(Seal).

Ex. "D 13."

To the Registrar of Property of the City of Manila:

The undersigned, as attorney and counsel for Cho-Jan-Ling, the owner of the property known as the "Old Theater," situated in the block formed by Dasmariñas, Ugalde, Marquina and Poblete streets of the District of Binondo of this City, respectfully states: That my clients desire that a certified copy of all

204 entries, inscriptions and marginal notes appearing in that registry with reference to the said property be issued to them for their use, and I accordingly request that the same be issued.

Manila, August 28th, 1905.

(Signed)

R. MORENO.

I, Pedro Concepción y Vergara, Register of Titles for the City of Manila, do hereby certify that by virtue of the foregoing petition presented by Roberto Moreno as attorney and counsel for the Chinaman Cho-Jan-Ling asking that a certified copy be issued of all the entries and inscriptions relating to the property referred to therein,

I have proceeded to examine the indexes and books of my Office, from which the following appears:

At page 89 of Volume 5 of the Binondo section the following entry appears:

Property No. 1147. First Inscription. Urban. A tract of land of polygonic shape resembling a trapezoid, and fifteen two storey *accessorias* thereon, with stone walls and tile roofs, fronting on Calle Dasmariñas, and other buildings not described, some with galvanized iron and others with tile roofs, this property being known as the "Old Theater" of Binondo, situated in the block formed by Calles Dasmariñas, Ugalde, Marquina and Poblete of the District of Binondo, within the northern district of this Registry. The property is numbered forty-one to seventy-five Calle Dasmariñas. It is bounded on the right by Calle Ugalde, on the left by Calle Marquina, and in back by Calle Poblete. It has a frontage of fifty-nine meters and sixty centimeters; on the right, thirty meters and fifty centimeters; on the left, thirty meters and fifty-five centimeters, and in back, fifty-nine meters and seventy centimeters, making a superficial area of one thousand eight hundred and twenty meters and 205 fifty-one decimeters. There is no record of any lien or incumbrance. The present value of the property is thirty-three thousand nine hundred and fifteen dollars, local currency. Long before the Mortgage Law went into effect in these Islands, and at the request of Francisco de Paula Cembrano, the executor of the deceased Prudencio Santos, the Governor of this Province ordered that the property of the estate of the said Prudencio Santos be appraised and sold at public auction, including the property known as the "Old Theater" of Binondo and the above described lot in the said District of Binondo, bounded in front by the houses of Jose Pascual Jugo, Catalino Villafranca, Juan Cabarus, a street and plaza intervening; on the right by the house of Ignacio Ponce de Leon; on the left by a lot belonging to the estate of Mariano Escalante, and in back by land belonging to Rosauo Cortes and to the said Escalante estate, which said property was purchased by Don Antonio Enriquez for the sum of sixteen thousand three hundred and sixty dollars, local currency. By an order dated April 19th, 1861, it was directed that the necessary deed of transfer in favor of the purchaser be executed. Don Luis de Yandiola, Governor of this Province, by virtue of the royal power vested in him, and of the authority granted him by law, accordingly sold, in behalf of the heirs and successors of the said Escalante, to the said Antonio Enriquez, the property above referred to for the sum already mentioned, which was paid by the purchaser Don Antonio Enriquez, also surnamed Sequera, as shown by certain documents then at hand, he being of age, a resident of this City, and married to Ciriaca Villanueva. I hereby register the title to the said property in favor of Antonio Enriquez y Sequera, who acquired the same by purchase. All of the foregoing appears from the deed of sale executed in this City on the eighth of July, 1871, before the Clerk of the Court, Eduardo Olgado, as well as the description of

the same, to which the following entry refers, copy of which
 206 said deed was filed in this office to-day at eight o'clock A. M.
 as per entry number 2231, page 42, volume 9 of the Diary.
 The foregoing being a true copy of the original to which I refer, I
 sign these presents in Manila, this 14th day of September, 1901.
 Simplicio del Rosario. Rubric. Fees \$25. Section 7 of the Tariff.

At page 90 of the said volume, section and number, the following
 entry appears:

Second Inscription. Urban. A tract of land of polygonic shape
 resembling a trapezoid, and fifteen two story *accesorias* thereon, with
 stone walls and tile roofs, fronting on Calle Dasmariñas, and other
 buildings not described, some with galvanized iron and others with
 tile roofs, this property being known as the "Old Theater" of Bi-
 nondo, situated in the block formed by Calles Dasmariñas, Ugalde,
 Marquina and Poblete of the District of Binondo, within the north-
 ern district of this Registry, the further description of the property
 taken from the title deeds submitted, already appear in the preced-
 ing entry. There is no record of any lien or incumbrances. An-
 tonio Enriquez y Sequera, of age, and a resident of this City, ac-
 quired the said property in the manner set forth in the said inscrip-
 tion. As the result of an executive action instituted in the Court
 of First Instance and later continued in the Court of First Instance
 of Binondo by the attorney and counsel of Jose Moreno Lacalle, and
 subsequently of his widow and testamentary executrix, Florencia
 de Victoria y Mendoza against the estate of the said Antonio En-
 riquez y Sequera, represented by its executor and administrator,
 Francisco Enriquez y Villanueva, to recover the sum of six thou-
 sand two hundred and ninety dollars, local currency, for profes-
 sional services rendered by the said Moreno Lacalle in connection
 with the said estate, the property in question was attached, and sub-
 sequently sold at public auction. On the day of the sale
 207 several bidders were present and the property was sold to

Francisco Saez Co-Tiongco, who offered the sum of thirty-
 three thousand nine hundred and fifteen dollars, Local currency,
 which said sum was paid into Court on the 28th of September of
 the same year. Don Francisco Enriquez having failed to execute
 the deed of sale, as directed by the Court, the Court ordered, on
 October 3rd, following, that the said deed be executed *ex-officio*.
 Jose Maria Memije y Zablan, of age, married and Judge of the
 Court of First Instance of the District of Binondo by reglamentary
 substitution, and a resident of this City, by virtue of the power
 vested in him by law, and in the name of the estate of Antonio En-
 riquez y Sequera, deceased, accordingly sold the property in ques-
 tion to the Christian Chinaman, Francisco Saez Co-Tiongco, of age,
 married, a merchant and a resident of this City for the aforesaid
 sum of thirty-three thousand nine hundred and fifteen dollars, local
 currency, paid as above stated into Court. On the 23rd of October,
 1893, Francisco, Rafael and Antonio Enriquez y Villanueva, the
 heirs of the said Antonio Enriquez y Sequera and Ciriaca Villa-
 nueva, signed an agreement in the office of the Attorney, Jose Mo-
 reno Lacalle, who also subscribed the same, whereby the said heirs

decided to sell the property in question, and with the proceeds of the same, to pay, among other things, the claim of the said Jose Moreno Lacalle for services rendered by him in the liquidation and settlement of the estate, wherefore I register the title to the said property in favor of the said Francisco Saez Co-Tiongco, who acquired the same by purchase at a judicial sale. All of the foregoing appears from the previous entry relating to the deed of sale executed in this City on the 12th of October last before the Notary Public Calixto Reyes y Cruz, as well as from the act of delivery of certain documents made at the request of Jose Moreno Lacalle on the
 208 ninth of March, 1898, by the Notary of this City Enrique Barrera y Valdes, copies of which deed and notarial act were filed in this Office at eight o'clock A. M., according to entry 2231, page 42, volume 9 of the Diary. The foregoing agreeing with the documents to which I refer, I sign these presents in Manila, this 14th day of September, 1901.—Simplicio del Rosario.—rubric—Fees. 425. Section 7 of the Tariff.

On the margin of this entry the following note appears:

As to the property to which this entry refers there is an action pending to have the title of the said Francisco Saez Co-Tiongco declared null and void, which said action was instituted by Rafael Enriquez for himself and as the administrator of the estate of his deceased father, Antonio Enriquez, according to a notice signed by attorneys Montagne & Dominguez and certified to by the Clerk of the Court, J. McMicking. Manila, August 23, 1902.—S. del Rosario.—rubric—Fees \$.50. Section 6 of the Tariff.

At page 117 of the second provisional volume of the said section, the following entry appears:

Third Inscription. Urban. A tract of land of polygonic shape resembling a trapezoid, and fifteen two storey *accessorias* thereon, with stone walls and tile roofs fronting on Calle Dasmariñas, and other buildings not described, some with galvanized iron and others with tile roofs, this property being known as the "Old Theater" of Binondo, situated in the block formed by Calles Dasmariñas, Ugalde, Marquina and Poblete, and numbered 41 to 75 of the District of Binondo, within the demarcation of the northern district of this Registry. The further description of the property, taken from the title deeds submitted, already appears in the first inscription. There is no record of any lien or incumbrance. Francisco Saez Co-Tiongco, of age, married, and a resident merchant of this City, District of

Santa Cruz is the owner of this property, he having acquired
 209 the same by purchase at the judicial sale, according to the previous entry, and he now sells the same to the Chinaman Cho-Jan-Ling, of age, unmarried and a resident merchant of this City, District of Binondo, for the sum of sixty-thousand dollars, Mexican currency, which the vendor acknowledges to have received from the vendee prior to the transfer of the property. The Chinaman Cho-Jan-Ling now registers the title thus acquired by him to the said property, by purchase. All of the foregoing appears from previous entries and from the bill of sale executed in this City July 11th, last, before the Notary Public Calixto Reyes y Cruz. A copy

of the said bill of sale, issued on the following day, was presented in this Office at eleven o'clock A. M., to-day, according to entry No. 61, page 21, tenth volume of the Diary. The foregoing agrees with the documents to which I refer and in witness whereof, I sign these presents in Manila, this 23rd day of August, 1902.—Simplicio del Rosario.—rubric—Fees \$25. Section 7 of the Tariff.

On the margin of this entry the following note appears:

In the Court of First Instance of this City there was filed on the 12th day of February, 1904, by Montagne & Dominguez, as attorneys and counsel for plaintiffs, Rafael Enriquez, for himself and as the administrator of the estate of the deceased Antonio Enriquez y Sequera, Don Antonio, Doña Rosario, Doña Gertrudis, and Doña Trinidad, all surnamed Enriquez, and the minor, Antonio Gascon, against Francisco Enriquez, Francisco Saez Co-Tiongco, Florencia Victoria and the Chinaman Cho-Jan-Ling, an amended complaint, said action having for its object to declare the title of the defendants and of each of them, null and void, and to determine the title to the property to which the attached entry refers. It so appears from a notice signed by the said attorneys February 15th, and certified to by the Clerk, Mr. J. McMicking, which said document was filed in this Office at ten o'clock A. M., the fifteenth instant, according to entry number 398, page 234 of the 7th Volume of the Diary.

The foregoing agrees with the documents to which I refer, 210 and in witness thereof I have signed these presents in Manila, this 26th day of February, 1904. Fees \$.50. Section 7 of the Tariff. Baretto.

At page 101, provisional volume 5 of the Binondo section, the following entry appears:

Fourth Inscription. Urban. A tract of land of polygonic shape resembling a trapezoid, and a two story building of strong materials with galvanized iron roof, recently constructed upon the said lot in place of the old buildings which were demolished, known as the "Old Theater". The new building is not numbered, but the property was formerly numbered 41 to 75, both inclusive, Calle Dasmariñas, situated in the block formed by this street and Calles Ugale, Marquina and Poblete of the District of Binondo of this City; the further description of the property appears in the first entry. The property is at present valued at one hundred and seventy-five thousand dollars, Conant. With the exception of the notice of *lis pendens* referred to in the note on the margin of the previous entry, the property is absolutely free from any lien or incumbrance. The Chinaman Cho-Jan-Ling, merchant, of age, unmarried, and a resident of this City is the owner of the property, he having bought the old lot and building and, after demolishing the latter, secured the necessary license to build and did build on the said lot, with his own money, the aforesaid two storey house, all of which, as well as the description of the property appears from a document duly acknowledged before the Notary Public. Wherefore, I hereby register in favor of the Chinaman, Cho-Jan-Ling, the title acquired by him to the new building, which is an integral part of the property thus numbered, he having built the same. All of the foregoing appears

from the previous entries and from the document executed on the 25th of January, 1904, and signed in the presence of witnesses, and on the same day acknowledged before the notary public of this

211 City, Jose Maria Rosado, y Calvo, which said document was presented in this Office at three o'clock, P. M., the fourteenth instant, according to entry number 7, page 3, volume 8 of the Diary. The foregoing agrees with the document to which I refer, and in witness thereof, I sign these presents in Manila this 24th day of March, 1904. Fees \$25. Section 7 of the Tariff. Alberto Barretto. The foregoing entries and notes correspond literally with the originals thereof, and in witness thereof, I sign these presents in Manila, this 29th day of August, 1905. (Signed) Pedro Concepción. Fees \$4.50. Sections 9 and 10 of the Tariff. (Seal.)

212 THE UNITED STATES OF AMERICA,
Philippine Islands:

R. G. No. 3502.

RAFAEL ENRIQUEZ, for Himself and as Administrator of the Estate of Antonio Enriquez y Sequera, Deceased; Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudes Enriquez, and Antonio Gascon, a Minor, Plaintiffs and Appellants,

versus

FRANCISCO SAEZ GO-TIONGCO, FLORENCIO VICTORIA, FRANCISCO ENRIQUEZ and CHO JAN-LING, Defendants and Appellees.

It is hereby stipulated by counsel in the above entitled cause, that the attached documents, marked Exhibits 15 and 16 respectively, are true copies of said exhibits in this cause and that the
213 same be forwarded by the Clerk of the Supreme Court of these Islands to the Supreme Court of the United States with the transcript of the record and proceedings in the said cause, in pursuance to the appeal heretofore allowed without prejudice to our (appellees') objections to the allowance of the appeal.

Manila, P. I., August 4, 1908.

HARTIGAN & ROHDE,

Counsel for Appellant.

KINCAID & HURD,

Counsel for Appellee.

[Stamped:] Clerk's Office, Supreme Court of the Philippines.
Filed Aug. 5, 1908. — M.

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EXHIBIT 15.

To the Court of First Instance of the City of Manila:

A. A. Montagne and F. E. Dominguez, as the legal representatives of Mr. Rafael Enriquez, and his co-heirs, as shown by the certified copy of the power of attorney hereto attached, respectively state to the Court:

That among the various cases connected with the estates of the deceased Antonio Enriquez and Ciriaca Villanueva, now pending in this court, there is one relating to the repurchase of the property known as the "Old Treater," belonging to the said estates, which said action was instituted against the Chinaman Francisco Saez Go-Tianco, who bought the property at public auction.

In the action in question there was presented more than three months ago a motion for the provisional deposit of the rents of the said property, which motion, notwithstanding the length of time it has been pending and the fact that your predecessor, the Honorable Basa, was requested to act upon the same, has never been acted upon, the said judge having even refused to take any action with reference to the said deposit in spite of the justice and necessity for the same alleged in our motion. The evident nullity of the sale at public auction of the property in question, the action for repurchase duly instituted long prior to the approval of the sale under execution, and adjudication of the property to the defendant Chinaman: the fact that the latter has been unlawfully in possession of the property from the very moment that my clients instituted the said

215 action of repurchase against the said Chinaman, and finally, the insolvency and lack of security on the part of the defendant to pay for the damage which our clients would incur if the said Chinaman were to continue in the unlawful possession of the property, receiving and holding with impunity the rents accruing therefrom, are circumstances which should demand and make necessary that the rent thus collected be deposited into court.

Wherefore, we pray the court to set for hearing the case relating to the repurchase of the aforesaid property known as the "Old Theater," to consider the undersigned as the legal representatives of Rafael Enriquez and co-heirs, to act upon the motion above referred to, and to direct that the rent of the said property be deposited into court in conformity with the motion of counsel who formerly represented our present client. And your petitioners will ever pray.

Manila, P. I., August 3, 1901.

(Signed)

A. A. MONTAGNE.

F. E. DOMINGUEZ.

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EXHIBIT 16.

Number Five Hundred Thirty-seven.

In Manila, this 25th day of August, 1897, before me, Jose Engracio Monroy y Torres, a Notary Public in and for this City, personally appeared Francisco Enriquez y Villanueva, 44 years of age, married, a resident of this city, with personal cedula of the 6th class, No. 12046, issued January 10th, last, by the administration of public revenues; Rafael Enriquez y Villanueva an artist 43 years of age, married, a resident of the city of Madrid and temporarily residing in this city of Manila, with personal cedula of the 6th class No. 23348, issued in the city of Madrid November 22, last year; Antonio Enriquez y Villanueva, 28 years of age, married, a resident

of this city, with personal cedula of the 6th class No. 12047, issued January 10th, this year, by the administration of public revenues of this province.

And all of them having assured me that they have the necessary legal capacity to execute this instrument, as I believe they have, nothing to the contrary to me appearing, freely and of their own will stated:

First. That the estate of their deceased father, Antonio Enriquez y Sequera, and that of their deceased mother, Ciriaca Villanueva being still undivided, and they, desiring to make a partition thereof within a short time, have entered into an agreement for this purpose, with the consent of the other persons interested in the said states; and this agreement, being the basis upon which the said partition will necessarily have to be made, they hereby embody
217 the same in this public instrument so as to give it the necessary solemnity and validity.

Second. That the facts upon which the said agreement is based are as follows:

After the death of their parents, certain disputes arose with reference to the said estates between Francisco and Rafael Enriquez, and being desirous of arriving at a friendly understanding, they entered into an agreement with the other persons interested in the estates, represented by the former, which said agreement was embodied in an instrument executed April 22, 1881, before the notary public of this city, Abraham Garcia y Garcia.

The principal bases of the said agreement were as follows:

First. To make the partition of the estates extrajudicially, that is to say, by proceeding first to make an inventory of the property; after the approval of the inventory, by the parties interested therein, to appraise the property, with the concurrence of all those interested therein; and finally to make a partition of such property in accordance with the terms of the will of the deceased father as to his estate, and in accordance with the provisions of the law in force as to the estate of the deceased mother; second, that the partition of the estate was to be made by Attorney Jose Juan de Icaza, designated by Francisco Enriquez, and Jose Moreno Lacalle, appointed by Rafael Enriquez, and third, that any differences which might arise
218 between the parties interested in the estates should be submitted to the decision of referees, if they related to questions of fact, and to arbitrators if they related to questions of law. Messrs. Icaza, Moreno Lacalle, and Cayetano Arellano have been appointed for this purpose.

In pursuance of this agreement and as preliminary to the inventory, Francisco Enriquez, as executor, proceeded to render an account of his administration of the estate of his deceased father, Antonio Enriquez, for the years 1884 to 1890. In the course of the examination of the said accounts, one of the persons interested in the estate made several objections, and in order to settle the same and to proceed to the partition of the estate, Messrs. Icaza and Moreno Lacalle met on the 19th of December of the last year and agreed as follows:

(a) With reference to the objections to the said accounts, that the items relating to costs should be charged to the estates; that the items relating to advances made to the participants in the estates should be considered as advances made to them upon their respective shares; that the items relating to the percentage which the administrator should receive, be determined in accordance with the law in force; that the items for policies and drafts be accepted as correct upon the presentation of the necessary vouchers; that the items for repairs to certain property belonging to this estate be rejected on account of their not having been fully established, without prejudice

219 to making a reasonable estimate of such expenses; (b) as to the inventory, that the executor shall render an account of the administration for the years 1891 to 1895, inclusive, and shall furnish all necessary data for the preparation of the inventory; (c) as to the appraisal of the property, that an expert be appointed to appraise the property of the estate; and, (d) as to the partition, that the shares of the participants in the estate be equal.

In pursuance of this agreement the expert Juan Caballero proceeded to appraise the property, and the executor, Francisco Enriquez, rendered an account of his administration for the period from 1891 to the month of June, 1896, as well as of his administration as attorney in fact for Don Antonio Enriquez, deceased, for the year 1883.

At this stage of the proceedings for partition, Jose Juan de Icaza, one of the persons appointed to make the partition died.

Third. That in consideration of the foregoing, the parties to these presents hereby agree that the present status of the partition of the property of the estate is as follows:

That the preparation of the inventory is now pending examination and approval, by the parties in interest, of the accounts rendered by the executor, and the determination of the property which actually belongs to the said estates; also, the manner in which the substitute of Señor Icaza should be made.

Fourth. That in view of this, the parties to this agreement have finally discussed what should be done to complete the partition, but have only agreed to modify the instrument of the 22nd of

220 April, 1891, and that the partition of the property of the estates be completed in the manner hereinafter set out:

I, Attorney Jose Moreno Lacalle is hereby appointed, alone, to make the partition of the estates;

II. For the approval of the accounts of the executor for the years 1884 and 1895, and the first six months of the year 1896, and of his accounts as attorney-in-fact for the deceased, Antonio Enriquez, during the year 1883, the following procedure shall be — follows:

(a) Don Rafael and Don Antonio Enriquez shall proceed to make an examination of the said account, which examination they must complete within the maximum period of three months, from this date;

(b) If the said gentlemen have any objections to the said account, they shall make them in writing, delivering a copy thereof to Attorney Moreno Lacalle who shall call a meeting of the parties hereto.

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to be held at a time to be designated by him within six days after the delivery of the said copy, in order to discuss and settle the said objections;

(c) If at this meeting, the parties to this agreement should fail to come to an understanding, or if no action is taken because it was not possible to hold the said meeting on account of the failure of some of the parties hereto to attend the same, without justifiable cause, the disputed questions shall be settled and decided by compromise, to which the parties hereto bind themselves irrevocably in the manner provided in the following paragraphs;

(d) In case no agreement is reached or no meeting is held, through the failure of some of the parties to attend same as aforesaid, Mr. Moreno Lacalle shall proceed, assisted by Mr. Cayetano Arellano, to render an opinion upon the questions raised by the objections to the account;

(e) If these gentlemen agree entirely, or in part, the decision shall be taken as the basis of a compromise upon such matters as to which they unanimously agree, and this compromise shall be binding upon the parties to this agreement and the other participants in the estates;

(f) If these two gentlemen should disagree, either wholly or in part, Mr. Moreno Lacalle shall call a new meeting of the parties to these presents to discuss the disputed questions, in order that they may decide by which decision to abide. If there by disagreement among the parties as to which decision shall prevail, a vote shall be taken between the three contracting parties, and the opinion decided upon by the majority shall govern the settlement of the question upon which the disagreement of opinion exists;

(g) If for any reason Mr. Arellano should excuse himself or be unable to render an opinion, or allow a month to elapse before giving his opinion, Mr. Moreno Lacalle alone shall give his, and the three contracting parties at a meeting held for this purpose shall decide by a majority vote whether they should abide or not by the recommendations of Mr. Lacalle, and their decision shall be the basis for the compromise;

222 (h) If any of the contracting parties should fail to attend, without just cause, the meetings provided in the two foregoing paragraphs, they shall be taken to have accepted the opinion and decision of the parties who attended the meeting. If only two of the contracting parties attend the meeting, and their opinions be conflicting, the decision of the referee, Mr. Lacalle, shall prevail, if he be the only one to submit such decision; and when the opinions rendered by Messrs. Arellano and Moreno Lacalle are in conflict, the question shall be decided by lot. If only one of the parties to this agreement should attend the meeting, his decision will be binding upon the others;

III. The executor, Francisco Enriquez, shall immediately present a list of the property of the estate, which said list will be examined by Don Rafael and Don Antonio Enriquez, and if there be any dispute between them as to the inclusion or exclusion of any property therein or therefrom, the matter will be settled in the manner provided in paragraphs (c) to (i), inclusive, of the second basis,

Upon the settlement or the approval of the accounts and the list of property, the result shall be taken as the assets of both estates.

IV. The contracting parties hereby accept the value given by the expert, Juan Caballero, to the property of the said estate, as shown by the certificates issued by him. Any other property upon which the value has not been so fixed shall be appraised by the contracting parties either by agreement or by majority.

223 V. Upon the completion of the examination of the accounts and the inventory of the property, the three contracting parties will meet on a day designated by the referee, and will proceed, with the inventory before them, to determine the manner in which the property should be distributed among those entitled thereto.

If there be no agreement among the parties, the property shall be divided in parcels by a majority vote, and these parcels shall be assigned by lot.

Should any of the contracting parties fail to attend this meeting, he shall be taken to have consented to the decision of those present.

VI. Upon the completion of the agreement contained in the preceding paragraph, the period for which the executor of the estate was appointed shall be considered ended and the accounts of administration shall be closed. The apportionment of the property shall be made with reference to that day, and any benefits or damages accruing to the participants in the estate shall be reckoned from that day.

VII. The list of property, the appraisal of the same, and the resolutions adopted as to the partition of the property shall be delivered to the referee, Mr. Moreno, as well as any other papers and documents which he may require in making the partition; taking as a basis for such partition the said list of property, the estimated value of the same, and the resolutions above referred to, subject to the provisions of the will of the deceased father of the contracting parties, and in accordance with the law relating to intestate succession, with reference to the estate of their deceased mother.

224 The partition of the estate shall be completed by Mr. Moreno within a month after the meeting referred to in the fifth basis is held.

Upon the completion thereof he shall call upon the contracting parties, that they may either approve or reject the partition, as submitted by him.

VIII. No objection to the partition shall be admissible unless it is founded upon some violation of the inventory, estimated value of the property, and apportionment approved by the parties in interest, of the equal distribution of the property of the estate among the heirs.

All objections shall be compromised in accordance with the decision of Mr. Cayetano Arellano.

IX. If any of the participants in the estate should make any claim in court in violation of the provisions of this instrument or of any agreement entered into by virtue hereof, and in accordance with the preestablished bases, he shall pay to those not making similar claim the sum of two thousand pesos, and unless he pays the said sum of two thousand pesos, his claim will not be allowed.

Notwithstanding the claim, the provisions of this instrument, and whatever may be done, this contract will be binding upon the other participants, as to whom it will be in full force and effect, as though no claim was ever made.

225 So said the contracting parties in the presence of the witnesses Mariano de Leon y Francisco, a candidate to the office of Procurator, and Tomas Dias Inocencio, clerk, residents of this city. The contracting parties having been informed of their right to read this instrument themselves, I proceeded to read the same to them, and they ratified its contents and subscribed these presents, with the aforesaid witnesses. To identify, occupation and residence of the contracting parties, and to all herein contained, I certify.—Francisco Enriquez—Rafael Enriquez—Antonio Enriquez—Tomas Dias—Mariano de Leon.

(Signed)

J. ENGRACIO MONROY.

On the same date, a first copy of the foregoing instrument was issued by me at the request of Francisco Enriquez y Villanueva on a sheet of stamped paper of the 5th class, and four sheets of the 10th class, number 1875, 691,216, 691,213, 691,210, and 691,211, respectively, to which I certify.

(Signed)

J. ENGRACIO MONROY.

The foregoing is a true copy of the original bearing the aforesaid number on file in the protocol of the notary public of this city, J. Engracio Monroy y Torres; at present in the general archives on the ground floor of the general superintendency of the treasury where the undersigned notary public of this city called at the request of Don Rafael Enriquez at whose request this copy is issued on a sheet of paper of the 5th class and five sheets of the 10th class for the present year.

Witness my seal and signature in Manila, this 20th day of September, 1900.

[NOTARY'S SEAL.]

(Signed)

GENERO HEREDIA.

226 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the two foregoing pieces of 103 and 225 typewritten pages, respectively, constitute a true and correct translation of the transcript of the record in Case No. 3502 of this Court, entitled Rafael Enriquez, for himself and as administrator of the estate of Antonio Enriquez y Sequera, deceased, Antonio Enriquez, Trinidad Enriquez, Cayetano Enriquez, Rosario Enriquez, Gertrudis Enriquez, and Antonio Gascon, a minor, plaintiffs and appellants, versus Francisco Saez Co-Tiongco, Florencia Victoria, Francisco Enriquez and Cho Jan-Ling, defendants and appellees.

In witness whereof, I have hereunto set my hand and affixed the

seal of the said Supreme Court, at Manila, Philippine Islands, this seventeenth day of August, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
*Clerk of the Supreme Court
of the Philippine Islands.*

Endorsed on cover: File No. 21,403. Philippine Islands, Supreme Court. Term No. 285. Rafael Enriquez, in his own name and as Administrator of the estate of Antonio Enriquez, deceased, et al., Appellants, vs. Francisco Saez Go-Tiongco, Florencia Victoria, Francisco Enriquez and Cho Jan-Ling. Filed November 7th, 1908. File No. 21,403.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 95.

RAFAEL ENRIQUEZ, in His Own Name and as Administrator of the
Estate of Antonio Enriquez, Deceased, et al., Appellants,

vs.

FRANCISCO SAEZ CO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO
ENRIQUEZ, and CHO-JANLING.

The attached certified copy of the codicil of the will of Don Antonio Enriquez having by inadvertence been omitted from the certified transcript sent to this Court in the above-entitled cause, it is hereby stipulated that same be now added to the record and considered as a part thereof in this Court.

JACKSON H. RALSTON,

FRED'K L. SIDDONS,

W. E. RICHARDSON,

Attorneys for Appellants.

ALDIS B. BROWNE,

ALEXANDER BRITTON,

EVANS BROWNE,

Attorneys for Appellees.

Number One Hundred and Five.

In the District of Binondo, Manila, this 5th day of October, 1881, before me, Don Vicente Santos, a notary public of this city, personally appeared Señor Don Antonio Enriquez, a European and Spaniard, of age, married, and a resident of this same district of Binondo, whom I certify that I know and who, having affirmed that he possessed sufficient legal capacity for the execution of the present instrument, stated: That, for the purpose of adding to the will, which, on May 4th, 1872, he executed before the notary, Don Francisco Salanova, a few clauses which, through involuntary omission, he failed to insert therein, he therefore hereby makes such additions by means of the present codicil which he executes in the following manner:

Par. 1. Having appointed in the fifth clause of the said will of May 4th, 1872, as guardian and curator of his said children, firstly, his wife, Doña Ciriaca Villanueva, secondly, his son Don Francisco, and thirdly, his other son Rafael, with exemption from all bond, and, in the same order above stated, as testamentary executors, according to the fourth clause of the said will, he therefore prays the Honorable Judge before whom a testimonial of this clause be presented, to approve and confirm these appointments and to confer the said charges upon the parties aforementioned, with the exemption aforesaid, inasmuch as this is an expression of his last will.

Par. 2. He likewise prays that the inventory, a valuation and partition of his estate be conducted extrajudicially, for, availing himself of the right conferred upon him by law, he prohibits all judicial intervention in the testamentary proceedings, since he authorizes the testamentary executors to act without restriction whatsoever and extends the period of their executorship for such time as may be necessary.

The affiant hereby declares that he does not revoke any of the clauses set forth in his only will executed on May 4th, 1872, as before stated, and desires that both provisions be complied with as being an expression of his last and deliberate will.

In the manner aforesaid he executes the present codicil in the presence of the witnesses Don Juan de Ocampo, Don Ancelmo Monzon, and Don Vicente Evangelista y Panis, residents of this city, whose presence for this purpose he had requested; and after this writing had been read both to the affiant and to the said witnesses, they all unanimously ratified the contents thereof and signed the same; to all of which, and that I know the said witnesses and that the testator was in complete possession of his entire mental faculties, I hereby certify. Antonio Enriquez, Juan de Ocampo, Vicente Evang^{ta}. Given before me, Vicente Santos.

This certificate is a first copy of its original on file on page 269, back, to page 270 of my protocol of this year; and at the request of the executor, I issue the present first copy which I sign and stamp, in Binondo, on the same date of its execution; all of which I hereby certify.

(S'g'd)

VICENTE SANTOS.

I, the undersigned, Clerk of the Supreme Court, hereby certify that the foregoing is a correct and true translation of its original.

[Seal Corte Suprema Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court.

20c. Philippine Islands Documentary Stamp.

Copy.

Number One Hundred and Five.

In the District of Binondo, Manila, this 5th day of October, 1881, before me, Don Vicente Santos, a notary public of this city, personally appeared Señor Don Antonio Enriquez, A european and Spaniard, of age, married, and a resident of this same district of Binondo, whom I certify that I know and who, having affirmed that he possessed sufficient legal capacity for the execution of the present instrument, stated: That, for the purpose of adding to the will, which, on May 4th, 1872, he executed before the notary, Don Francisco Salanova, a few clauses which, through involuntary omission, he failed to insert therein, he therefore hereby makes such additions by means of the present codicil which he executes in the following manner:

Par. 1. Having appointed in the fifth clause of the said will of May 4th, 1872, as guardian and curator of his said children, firstly, his wife, Doña Ciriaca Villanueva, secondly, his son Don Francisco, and thirdly, his other son Rafael, with exemption from all bond, and, in the same order above stated, as testamentary executors, according to the fourth clause of the said will, he therefore prays the Honorable Judge before whom a testimonial of this clause be presented, to approve and confirm these appointments and to confer the said charges upon the parties aforementioned, with the exemption aforesaid, inasmuch as this is an expression of his last will.

Par. 2. He likewise prays that the inventory, a valuation and partition of his estate be conducted extrajudicially, for, availing himself of the right conferred upon him by law, he prohibits all judicial intervention in the testamentary proceedings, since he authorizes the testamentary executors to act without restriction whatsoever and extends the period of their executorship for such time as may be necessary.

The affiant hereby declares that he does not revoke any of the clauses set forth in his only will executed on May 4th, 1872, as before stated, and desires that both provisions be complied with as being an expression of his last and deliberate will.

In the manner aforesaid he executes the present codicil in the presence of the witnesses Don Juan de Ocampo, Don Ancelmo Monzon, and Don Vicente Evangelista y Panis, residents of this city, whose presence for this purpose he had requested; and after this writing had been read both to the affiant and to the said witnesses, they all unanimously ratified the contents thereof and signed the same: to all of which, and that I know the said witnesses and that the testator was in complete possession of his entire mental faculties, I hereby certify. Antonio Enriquez, Juan de Ocampo, Vicente Evangelista. Given before me, Vincente Santos.

This certificate is a first copy of its original on file on page 269, back, to page 270 of my protocol of this year; and at the request

of the executor, I issue the present first copy which I sign and stamp, in Binondo, on the same date of its execution; al- of which I hereby certify.

(S'g'd)

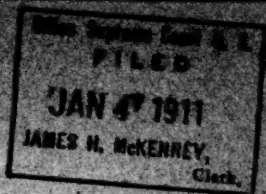
VICENTE SANTOS.

I, the undersigned, Clerk of the Supreme Court, hereby certify that the foregoing is a correct and true translation of its original.

J. E. BLANCO,

Clerk of the Supreme Court.

[Endorsed:] File No. 21,403. Supreme Court U. S. October Term, 1910. Term No. 95. Rafael Enriquez, in his own name and as adm'r, etc., et al., appellants, vs. Francisco Saez Go-Tiongco et al. Stipulation and addition to record. Filed March 8, 1911.



IN THE
Supreme Court of the United States
OCTOBER TERM, 1910

RAFAEL ENRIQUEZ, in his
own name and as Administrator
of Antonio Enriquez, et al.,

Appellants,

vs.

FRANCISCO SAEZ GO-
TIONGCO, FLOREN CIA
VICTORIA, FRANCISCO
ENRIQUEZ and CHO JAN-
LING.

Number 95.

**BRIEF FOR PLAINTIFFS AND
APPELLANTS**

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1910

RAFAEL ENRIQUEZ, in his
own name and as Administrator
of Antonio Enriquez, et al.,

Appellants,

vs.

FRANCISCO SAEZ GO-
TIONGCO, FLORENCIA
VICTORIA, FRANCISCO
ENRIQUEZ and CHO JAN-
LING.

Number 95.

BRIEF FOR PLAINTIFFS AND APPELLANTS.

STATEMENT OF FACTS.

The plaintiffs brought suit on September 21, 1900, against Florencia Victoria Mendosa, surviving wife and testamentary executrix of José Moreno Lacalle, for the purpose of nullifying an executive action which had been brought by José Moreno Lacalle against Francisco Enriquez, as administrator of the estate of Antonio Enriquez, deceased.

It appears from the complaint and the facts proven in this case, that when Antonion Enriquez died in the year 1884, he left a last will and testament, in which he declared that his wife, Ciriaca Villanueva (Record, page 94)

“. . . brought no property to the marriage, but she is entitled to one-half of all my holdings, all my property belonging to the conjugal partnership.”

By other terms of the will (Record, page 93) his wife was appointed as executrix, and she failing, his son, Francisco, and he failing, his other son, Rafael,

“ . . . relieving them from the necessity of giving bond, and extending the time for such period as may be necessary for the rendition of the account and the execution of this my last will.”

His heirs were his ten children, nine interests being represented by the plaintiffs herein, and the tenth interest being that of Francisco Enriquez, a defendant herein.

Señora Enriquez predeceased her husband, dying in 1882, and after his death, his son, Francisco, acted as executor up to at least May, 1900. (Record, page 104.) At this time Francisco was put in jail under charges of fraud made by or at the instance of other members of the family, and during his confinement, Rafael acted as administrator and subsequently, and in March, 1901, being permanently appointed.

It further appears that José Moreno Lacalle, having been employed by Francisco, Rafael and Antonio Enriquez (Record, page 179) on October 23, 1893, the three last named agreed to sell the property in the city of Manila known as “the Old Theatre property,” to pay his claim for services rendered in the liquidation and settlement of the estate. This course, however, was not taken.

Later, and on September 29, 1898 (Record, page 4), Lacalle brought a suit against Francisco Enriquez as administrator of the estate of Antonio Enriquez, deceased, for the sum of 6,290 pesos, the action being an executive one (that is, the debt being formally admitted by Enriquez, judgment was given without contest), and in this action the property above referred to was directed to be sold. The action now before the Court was brought to nullify the suit of José

Moreno Lacalle, which, as above stated, was continued by his wife.

While the present suit was pending, and on October 3, 1900, the "Old Theatre" property was sold on execution in Lacalle's suit, to Francisco Saez Go-Tiongco, and a deed executed on October 12, 1900. Thereafter and on April 28, 1902, plaintiffs filed an amended complaint (Record, page 9) making Go-Tiongco a party, and asking for the appointment of a receiver to take possession of the property and collect the rents, that a liquidation and settlement be made between the parties, that the sale of the property be adjudged null and void, and the property itself be decreed to belong to the estate of Antonio Enriquez, free from any claim in favor of the defendants.

It appears (Record, page 25) that on May 2, 1902, a notice of *lis pendens* of this action was filed in the office of the Register of Property, but it does not seem to have been formally entered until August 23, 1902, at 9 o'clock a. m., a deed of sale from Go-Tiongco in favor of Cho Jan-Ling being presented at the same office on the same day at 11 o'clock a. m.

Thereafter, and on February 10, 1904 (Record, page 14) a second amended complaint was filed reciting Cho Jan-Ling's interest in the subject matter and making him a party, praying that the sale to him might be declared null and void, and that the property in question be declared the property of the plaintiffs and of the estate of Antonio Enriquez, and that the property be redelivered to them.

In the above condition, proper pleadings having been filed by the defendants, the case was tried in the Court of First Instance and an opinion rendered adverse to the plaintiffs. (Record, page 39.) This was appealed to the Supreme Court of the Philippine Islands, which, upon somewhat different grounds, sustained the Court below. (Record, page 48.) From the latter decision an appeal is taken to this Court, it appearing by the affidavits of Rafael Enriquez (Record, page

56) that the real property the title to and possession in which is involved, is of the value of \$50,000 gold.

It is to be noted that on the same day this action was filed (September 21, 1900) another suit was commenced (Record, page 62) against Francisco Go-Tiongeo for redemption of the "Old Theatre" property from sale in the Lacalle suit, setting up its sale without knowledge of the other heirs to Go-Tiongeo for 33,915 pesos, the plaintiffs claiming the right as owners of all except Francisco Enriquez's share to redeem under the provisions of Sections 1521 and 1522 of the Civil Code, which read as follows:

"Art. 1521. El retracto legal es el derecho de subrogarse, con las mismas condiciones estipuladas en el contrato, en lugar del que adquiere una cosa por compra ó dación en pago."

"Art. 1522. El copropietario de una cosa común podrá usar del retracto en el caso de enajenarse á un extraño la parte de todos las demás condueños ó de alguno de ellos.

"Cuando dos ó más copropietarios quieran usar del retracto, sólo podrán hacerlo á prorrata de la porción que tengan en la cosa común."

These Sections may be translated as follows:

Section 1521. Legal repurchase is the right to be subrogated to the terms of the contract in the place of whoever may acquire a thing by purchase or payment made.

Section 1522. The co-proprietor of a thing held in common may use the right of repurchase in a case where there has been allotted to a stranger the part belonging to all the others or any one of them.

When two or more co-owners desire to make use of

the right of repurchase they may only do so *pro rata* according to the proportion which they may hold in the thing held in common.

When this suit was filed the period of redemption had not expired and the deposit required by law was made. The petition notified the defendant that on the same day the suit to have the Lacalle claim declared null and void was being filed Go-Tiongeo appeared and pleaded to this action. (Record, page 65.) Judgment was given against the plaintiffs (Record, page 80), the grounds alleged being that the entire property had been sold, and not that of a joint owner.

ASSIGNMENT OF ERRORS.

I.

The Court erred in affirming the judgment of the Court of First Instance dismissing plaintiffs' action;

II.

The Court erred in holding that the estates of Antonio Enriquez and of Doña Ciriaca Villaneuva, or the heirs interested therein, were responsible for the payment of the debt upon which Francisco Enriquez was sued as executor and administrator by José Moreno Lacalle;

III.

The Court erred in holding that the property in question in this suit was legally sold under and by virtue of the judgment and execution in the case of José Moreno Lacalle against Francisco Enriquez, as executor and administrator;

IV.

The Court erred in holding that Francisco Enriquez was at any time administrator (administrador) of the estates of either Antonio Enriquez or Da. Ciriaca Villaneuva;

V.

The Court erred in refusing to declare void the sale made by the Court of First Instance of Manila of the property in question in this suit to Francisco Saez Go-Tiongeo and subsequently to Cho Jan-Ling;

VI.

The Court erred in holding that under the law as it existed in the Philippine Islands prior to the change made under American sovereignty, real property of estates of deceased persons could be sold under execution without giving the heirs an opportunity to be heard;

VII.

The Court erred in rendering judgment acquitting defendant of plaintiffs' complaint.

ARGUMENT.

Several points are raised in this case which we may consider in the order indicated in the opinion of Chief Justice Willard, of the Supreme Court of the Philippine Islands (Record, page 48):

First. The debt in question having been incurred after the death of Don Antonio and Dona Ciriaca Enriquez was not an obligation binding upon their estates, but only upon the individuals who employed Lacalle.

The correctness of this position under American law and under the law now prevailing in the Philippine Islands is admitted by the Court below (Record, page 50) and we feel relieved from argument thereon in these respects. On the strength of what is alleged but not shown to be the old Spanish

law in connection with the will of Antonio Enriquez, it is argued that this rule has no present application. Let us see.

The will provides (Record, page 93):

"Fourth. I appoint as my testamentary executors Doña Ciriaca Villanueva, my wife, and she failing, my son, Francisco, and he failing, my other son, Rafael, relieving them from the necessity of giving bond, and extending the time for such period as may be necessary for the rendition of account and the execution of this my last will."

The codicil to the will not appearing in this record is summarized by the Supreme Court of the Philippine Islands (Record, page 50) as follows:

"It is likewise his will that the inventory, valuation and partition of this estate be made extrajudicially and by virtue of the power which the law grants him, he forbids any judicial interference in the settlement thereof, conferring upon his executors the necessary authority therefor, without any restriction whatever, and extending their term of office for such period as may be required for this purpose."

The Court bases its position upon the fact, as it says, that under the Spanish Law of Civil Procedure, the executor was allowed to proceed extrajudicially, as was done in this case, and when the transaction here in question took place there was no judicial proceeding pending for the settlement of either estate. The broad assertion is made that "under the law existing prior to the promulgation of the present Code of Procedure, this contract bound the two estates in question, there can be no doubt."

We have been unable to discover the slightest support for this position, and in view of citations hereafter to be made,

we dispute its correctness. Nowhere have we been able to find authority in the executor of the husband's estate to bind either such estate or the estate of a predeceased wife for obligations voluntarily assumed by him.

And we point in this connection to the nature of the employment. Lacalle was to make a partition of the real estate of the two spouses and when and as called upon to determine the statement of accounts of the executor (Record, page 185). Such service was purely personal and the parties employing him were personally liable. Surely it was not the duty of the executor to partition the estates, or under the Spanish codes to have them partitioned, and equally surely, if he anticipated disputes with the heirs as to his accounts, it was his duty to himself to have them straightened out.

It is admitted by the Supreme Court of the Philippine Islands that had the proceedings been prosecuted judicially, the executor's personal responsibility would have been involved and the estates would have been relieved from liability. Is the situation in any degree changed because without judicial intervention the executor has proceeded to do that which he had no right as executor to do judicially? May his personal responsibility be diminished and the responsibility of the estate increased outside of court over what it would have been inside of court? The reason for the conclusion reached by the Supreme Court of the Islands is not at all manifest, nor is any law pointed out justifying it.

We can understand that the testator believed that he was relieving the executor from a burden which might have been inconvenient when he was released from any obligation to give bonds, and the time necessary for the rendition of accounts and the execution of the will was extended, but we fail to see how in so doing the executor's intent was made manifest to impose additional and unexpected burdens upon the estate.

It will not be lost sight of that there never was any administration by the husband or anyone else, upon the estate of Ciriaca Enriquez as co-owner of the property acquired during the community, and this being so, it becomes difficult to understand how, as stated by the Supreme Court of the Philippine Islands (Record, page 51), the contract under discussion bound the two estates in question, the parties to it being Francisco Enriquez as administrator of the estate of Antonio Enriquez, and two of the other heirs, the only liability assumed by any one apparently being a personal one.

We have discussed the foregoing proposition not because it has seemed to us that it was within the power of this Court to enter into the original bases of the judgment against Francisco Enriquez as administrator or executor of his father's estate, but for the enlightenment of the Court, and because the point has received attention at the hands of the Supreme Court of the Philippines, and has a certain bearing upon the matters hereinafter to be considered.

According to the opinion of the Court below (Record, page 50), the next point relied upon by the plaintiffs here is the claim that—

Second. Even if the claim of Lacalle were binding upon the estate of Antonio Enriquez, the action for its recovery should have been directed against the heirs and not against the executor.

We deny that the claim itself in this instance could at all be regarded as binding in the full sense of that word upon the estate of Don Antonio, or upon that of his wife. The question now is whether, even if the claim were put into judgment, it has been so done as to bind the estate, the executor as such being the sole defendant.

We understand substantially the same rule to exist at the Civil Law as exists at the Common Law, that is—that claims

should be made in the first instance out of the personal property, and in the case of deficiency, then from the real estate, by means of an action to which the heirs entitled to the estate should be parties (See Sec. 1030, Civil Code). In the case at bar, the action at every stage was one against Francisco Enriquez, administrator, or as administrator, of the estate of Antonio Enriquez. At no point was it against the estate of Ciriaca Enriquez, or against her heirs, or the heirs of the estate of Antonio Enriquez.

This brings us to the next and most important point.

Third. Don Antonio Enriquez was the executor only of his father's estate, and from the action having been directed against him in that capacity, the judgment entered therein could in no event bind the estate of Ciriaca Enriquez, his wife, and the sale of one-half of the property in question under the judgment rendered in that action was absolutely void, because that half belonged not to the estate of Don Antonio, but to the estate of Dona Ciriaca.

Our first proposition with reference to the binding character of the judgment is, therefore, that no person other than Francisco Enriquez and no interest other than that belonging to him as an individual could possibly be bound to pay the judgment in this case. If this proposition were not correct, it would remain true that Francisco Enriquez was only the executor of Antonio, his father, was incapable of incurring a debt which could be made out of the estate of his mother, and therefore that only the father's estate in the property hereinbefore mentioned could have passed under judgment and execution.

In the first event, the entire interest in the estate conveyed to any of the defendants by the execution would be one-twentieth, arrived at in this manner: Upon the death of Ciriaca Enriquez, her ten heirs became entitled to share in

her undivided one-half of the community estate, or, as it is called in the Spanish law, *bienes gananciales*. The interest of Francisco Enriquez, therefore, being one-tenth of one-half, or one-twentieth of the whole of the estate, would be all that could be affected by any judgment against him on an undertaking fairly entered into by him, and not necessary for the benefit of or obligatory upon the estate of Antonio Enriquez. It follows that, as we shall demonstrate, the heirs becoming the owners of the Ciriaca interest immediately upon their mother's death, subject only to their father's right to the usufruct, in no event could Francisco, even if the estate of Antonio were liable, obligate the half interest of their mother, Ciriaca.

It becomes necessary now to refer to some of the statutes and decisions controlling the matter.

The doctrine of community of goods as between husband and wife is one of Civil Law origin, and the general principles applicable thereto seem not materially different in the various countries where this institution prevails. We refer first to some provisions of the French Civil Code. Note 16 to Article 1467 in Code Civil Annoté states that the balance sheet of debts and credits of the community should be fixed as of the date of the dissolution of the community and not at that of its liquidation, citing several decisions of the French courts and civil law authorities. The lack of discretionary power in the husband to dispose of more than his part in the community funds is indicated by Article 1423 of the same code.

Under the head of *Bienes Gananciales*, Escriche in his Diccionario Razonado enumerates as the debts which may be charged against them those which may have been contracted during the existence of the marriage relation on account of the conjugal society, and states that the community of goods ceases whenever either of the consorts may die. The wife, he adds, the husband being dead, may acquire the full prop-

erty and administration of one-half of the gains made during the marriage and can dispose fairly of them by contract or by law without any obligation to reserve them for the children of the marriage, subject only to the reserved rights of the heirs in a portion of her inheritance known as the *Legitima*. The power of the husband is the same.

The foregoing statements of Escriche are to be found in effect in the Civil Code in force in the Philippines at the time of the beginning of the difficulties we have recited. Article 1408, as translated by Walton's Civil Law in Spain and Spanish America, reads, in so far as is material for our purposes:

"The conjugal community shall be responsible for:

"1. All the debts and obligations contracted *during the marriage* by the husband and also those contracted by the wife in the case in which she can legally bind the community."

And Article 1414 says that:

"The husband can dispose by testament only of his half of the property of the conjugal community."

The Spanish of the foregoing section reads as follows:

"El marido no podrá desponar por testamento sino de su mitad de gananciales."

When the period of liquidation of the community of goods is reached, it is provided by Article 1426 as follows:

"The net remainder of the community property shall be divided, share and share alike, between the husband and wife, or their respective heirs."

Among other States adopting the doctrine of community of goods is that of Texas, and in the case of *Wright vs. McGinty*, 37 Texas, 733, it was held that after death of the wife, the husband not administering, "he could have sold his undivided community interest; but he had no right to sell the estate of his wife unless to pay community debts." Surely, if the husband who did not administer in this case had no right to sell the estate of the wife except to pay the community debts, the position of his administrator who no more than himself had administered his wife's estate, could not be any stronger, and by no means could he have had the right to incur debts by virtue of which the estate of the wife could be sold. The same case refers to the fact, which must be evident from what has already been said, that the husband is as to the community property, a tenant in common with the children.

As of value upon the general discussion in which we are now indulging, we refer to the case of *Rudd vs. Johnson*, 60 Texas, 91, in which it was said:

"It may be conceded that the administrator of the deceased husband's estate would have the authority to maintain suits to recover and reduce to possession the whole community estate for the purpose of administration to the extent of paying the community debts, without the necessity of joining with him either the heirs of the deceased wife or husband. But he is not the representative of the heirs of the deceased wife, to the extent that a judgment against him recovering lands belonging to the community would constitute a bar to a suit by such heirs for the community interest of their mother.

"Upon the death of the wife, the marital partnership is dissolved, and the community estate immediately vests, one-half in the husband and the other

one-half in the heirs of the deceased wife. This property, however, thus descends burdened with the community debts. And after the death of the wife the husband may sell it for the purpose of paying these community debts. That is the full extent of his authority over it, without first qualifying as survivor in community.

"Suppose that after the death of the wife, suit should be brought and judgment recovered against the husband alone, for lands belonging to the community, when he had not qualified as survivor; it is not believed that such judgment would bar a recovery by the heirs of the deceased wife for her community interest in such land. And we are unable to perceive why the power and authority of the husband's administrator in this respect should be considered more extensive than that of the husband during his life."

In *Lataillade vs. Orena*, 91 Cal., 565, 25 American State Reports, 219, it was held that under the Mexican law, on the death of the husband, title to ranches immediately vested in the widow and children, without the necessity of any administration (citing *De la Guerre vs. Packard*, 17 Cal., 183; *Scott vs. Ward*, 13 Cal., 459) and the mother had no power to sell the children's lands. If the surviving member of the conjugal partnership has no right to sell the lands descending to the children save, at least, in the extremest event, to pay debts of the community, surely the executor of the survivor could not sell such lands to pay debts which he has himself created, which were not debts of the community and because of the date of their creation could not be such debts.

Other California decisions holding that under the Mexican law, upon the death of one spouse the survivor became entitled to one-half the property, subject only to the payment of the debts of the community, are *Scott vs. Ward*, 13 Cal.,

458; *Morrison vs. Bowman*, 29 Cal., 337; *Hollister vs. Cordero*, 76 Cal., 651; *Spreckels vs. Spreckels*, 116 Cal., 339; 58 American State Reports, 170.

In Louisiana it has been held (*Murphy's Heirs vs. Jurey*, 39 La. Ann., 785) that the heirs of the wife become vested with the title to her share of the community property at the moment of her death.

In the case of *Dumestre*, 42 Louisiana Annual, 411, it was held that the husband having died, "the property is not community property, but property held in indivision and joint ownership by the succession of Mrs. Blanche Dumestre and the two major heirs of Alexis Dumestre." In this case it was considered that the administrator had the authority, and that upon him the law had imposed a duty to sue for partition under Section 1135 of the Civil Code. We are unable to find any section in the Spanish Code in force in the Philippines conferring a similar right upon the administrator.

In a number of cases in the State of Washington it has been declared that community real estate was not liable for the separate or individual debt of the husband, and could only be reached for community debts. We refer, among others, to *La Selle vs. Woolery*, 14 Wash., 70; 53 Am. St. Reps., 855; *Stockand vs. Bartlett*, 4 Wash., 730; *Morse vs. Estabrook*, 19 Wash., 92; 67 Am. State Reps., 723.

Summing up all the circumstances in this case, it would seem that—

1. The administrator of Antonio Enriquez was given no power to contract any debt whatsoever chargeable upon the estate of Ciriaca Enriquez.

2. That he was given no power as executor of Antonio Enriquez to charge any debt against such estate, either by express statute or otherwise.

3. That it must be considered that, incurring a debt with Lacalle, he could involve liability on the part of no one except himself, and in naming the "Old Theatre" property as proper

to be seized upon, he could indicate it so far as his own personal interest in such property was concerned.

4. That whatever may have been the form of the judgment—and it was against Francisco Enriquez as administrator of the estate of Antonio Enriquez—only the interest of Francisco Enriquez in the property was seized, sold and conveyed.

5. That as a consequence, the whole proceedings were properly to be treated as a nullity against the nine remaining brothers and sisters of Francisco Enriquez, or their representatives.

6. That Go-Tiongco took whatever estate he may have received chargeable with full notice of the actual legal situation, since the records show the descent of the property and the nature of the claim sued upon.

7. That Cho Jan-Ling stood in no better position than Go-Tiongco, the record warning him of the claims of the parties, and the only interest which might have been conveyed him being that of Francisco Enriquez.

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Office Supreme Court, U. S.
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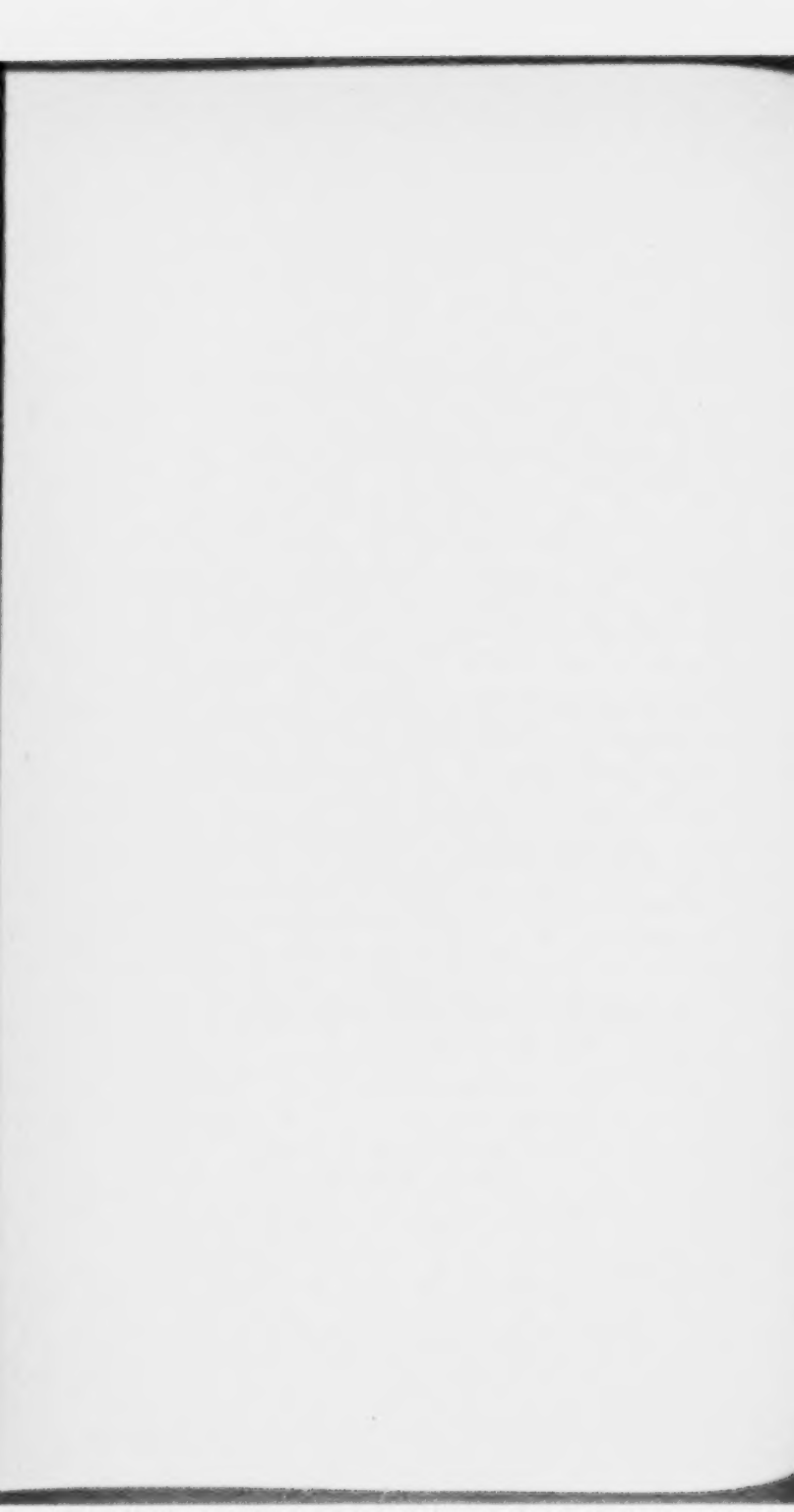
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REPLY BRIEF FOR APPELLANTS.

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REPLY BRIEF FOR APPELLANTS.

The larger portion of the brief presented on behalf of the appellees we have no desire to contest, save as to its applicability to the facts of this case. It is based upon the hypothesis that the community property is subject to community debts, with the assumption, not, as we think, sustained by the law or the facts of this case, that the debt for which it was attempted to make the property of the appellants liable was a debt of this nature. For the purpose of establishing the fact that the debt in question, which was

incurred largely for a partition, which, in fact, was never carried out, was a proper charge upon the community property, there is cited, on page 21 of appellee's brief, a portion of article 1408 of the Civil Code applicable in this case. We think that the whole of the article referred to should be laid before the court. This reads as follows:

"ART. 1408. The conjugal partnership shall be liable for:

1. All the debts and obligations contracted during the marriage by the husband and also for those contracted by the wife in the cases in which she can legally bind the partnership.

2. The arrears or interest, matured during the marriage, of obligations which affect the private property of the spouses, as well as the partnership property.

3. The minor repairs or of mere preservation, made during the marriage, the private property of the husband or the wife. Extensive repairs shall not be chargeable to the partnership.

4. Extensive or minor repairs to the property of the partnership.

5. The support of the family and the education of the children in common, and of the legitimate children of the spouses only."

A mere reading of the section shows that the debt sued upon was not such a debt as that the conjugal estate should be chargeable therefor.

Back of the position suggested, which seems to us completely answered by the language of the Code, rests the question of the power of the husband or his administrator over the conjugal property, the wife predeceasing him. This, in our judgment, is answered absolutely by the language of section 1414 of the Code, reading as follows: "The husband can dispose by testament *only of his half of the property of the conjugal community.*"

The attention of the court is invited to the fact that while, with looseness of language, the community property is

spoken of often as that of the "conjugal partnership," or as "property of the conjugal partnership," this is not the exact translation of the Spanish, and the idea of partnership in the legal sense to which we are accustomed should not be applied to community property under the Spanish law. Article 1407, cited on page 20 of appellee's brief, is translated as follows: "All the property of the marriage shall be considered as *partnership property* until it is proven that it belongs exclusively to the husband or to the wife." The exact language of the same Code is: "Se reputan *gananciales* todos los bienes del matrimonio, mientras no se pruebe que pertenecen privativamente al marido ó á la mujer."

So, also, in the case of article 59, which is translated: "The husband is the administrator of the *property of the conjugal partnership* except where the control is stipulated." And in the case of article 1384, the Spanish reads: "El marido es el administrador de *los bienes de la sociedad conyugal*, salvo estipulación en contrario y lo dispuesto en el art. 1384."

So, again, in article 1408, the first line of which is: "The *conjugal partnership* shall be liable for," etc., the Spanish reads—"Serán de cargo de la *sociedad de gananciales*," etc.

It will be seen that in no instance is the word "partnership," in its technical, common-law signification, applicable under the Spanish law, and the things which are regarded as coming under the conjugal control are the "*bienes gananciales*," or, following the French equivalent, those which fall under the title of "*communauté de biens*."

If, therefore, the word "partnership" has any application at all to goods held under the conjugal relation, such application is limited and special.

With this statement of the legal condition, let us go further and see the necessary results. The husband's power of disposition was limited, as we have indicated, to a disposition by testament simply of his part of the conjugal property, leaving that of the wife only liable for the payment of community debts, the debt forming the basis of the judg-

ment in this case not being of this character. If the husband had himself no power except for the purposes named, to dispose of his wife's property, he could confer, of course, no greater power upon his executor, and an attempt on the part of the executor to create a liability where none existed in law must be vain.

We note that the power to sue for partition, which under the law of Louisiana existed in the administrator (42 La. Ann., 411), did not exist in the Spanish Code in force in the Philippines, and the husband surviving the wife is not, in their Civil Code, given any right to allot the estate as between the heirs. The sections covering the matter of division of an estate are numbered 1051 to 1087, inclusive. No one of these sections contemplates the making by an executor of the husband of a division of the estate of the wife among those concerned.

The will of Antonio Enriquez does not purport to deal with anything except his own property, following the understanding of the law between all the parties concerned when they entered into the contract, as contained on pages 185 to 188, inclusive, which was as we have maintained, for in the making of this contract it will be noted that not alone the executor, but the representatives of the heirs of the two estates, joined, while they agreed, in paragraph XII (Record, page 187), that such partition should be made, "taking as the basis for such partition the said list of property, the estimated value of the same, and the results above referred to, subject to the provisions of the will of the deceased father of the contracting parties, and in accordance with the law relating to intestate succession, with reference to the estate of their deceased mother."

By the very act, therefore, of the executor, upon which the Lacalle claim originated, the estate of the father was treated as one entity, and as controlled by the terms of his will; the estate of the mother was treated as a distinct entity, and as controlled by the provisions of the law relating to intestate succession.

We find, thus, in the very beginning that the work was by the act of the parties severed as between the two estates, while, in the first place, Icaza was designated by Francisco Enriquez, who was then executor of the estate of Antonio and Lacalle, who was appointed by Rafael, but who subsequently acted, so far as he did act, alone, by mutual agreement of the parties.

Upon the very basis of the judgment, therefore, Lacalle had apparently a claim for services against the executor of the estate of Antonio and also against the owners of the other entity, the estate of Ciriaca.

It is unavailing to say, as has been suggested several times in the brief of the appellees, that at least there was a moral obligation on the part of the representatives of the estate of Ciriaca Enriquez to pay the Lacalle judgment. There is no legal obligation here, Lacalle electing to hold responsible the executor of the estate of Antonio Enriquez, such estate being recognized as a separate entity in the contract itself. Whether a moral liability of any kind existed is a question upon which it is impossible for this court, or any other, to express an opinion, for there is nothing to show the relations of the parties when suit was brought and the issues between them have never been tried out. Nor can this court be asked to measure the extent of a liability which the party claimant has not considered of sufficient gravity to put into suit.

Some other contentions in appellee's brief, made apparently for the first time in this court, deserve attention.

It is suggested that as the recipient of part of the purchase money—a former lienor—was not a party in this proceeding, and as this is a suit to annul the sale, the proceeding must fail. The court will note that only now is it suggested that the lienor should be made a party, although any such suggestion of want of parties—proper, but not necessary, no relief being prayed against them—should have been made in the trial court. Neither the trial court nor the Supreme

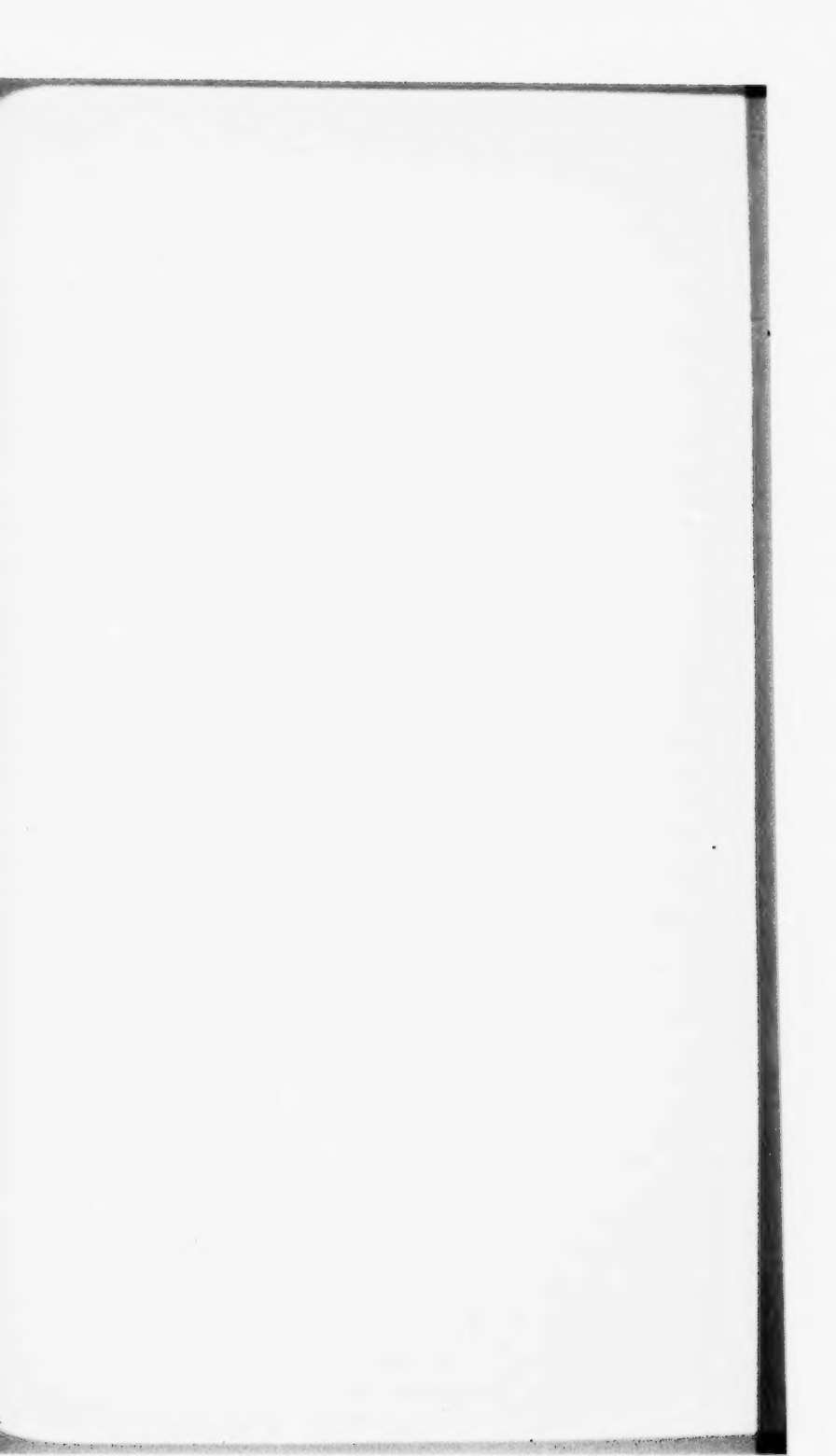
Court of the Philippines deals with any such proposition, and it is now too late to raise it.

Turpin vs. Dennis, 139 Ill., 274.

But although one prayer of the complaint asks annulment, this is not the only relief prayed, or to which plaintiffs are entitled. Referring to the second amended complaint, to which all the defendants are parties (Record, page 18), we find that the prayers are for a receiver, liquidation of prior rents; that the several sales be declared null and void; that the property be adjudged that of the plaintiffs and of the estate of Antonio Enriquez free of any lien on the part of the defendants; that the defendants may be adjudged to have no title in the property; that defendants may be ousted and the property delivered to the plaintiffs and the administrator of the estate of Antonio Enriquez, and for general relief and costs.

We have admitted, and do admit, that the sale under the Lacalle judgment may be good against the interest of Francisco Enriquez individually, at least in the estate of Antonio Enriquez. To this extent it would seem inappropriate to set it aside, but other relief prayed should be granted. We object to the interpretation given the judgment and sale, under which it is claimed that the entire title passed to the property. Upon the face of the records of property each of the defendants respectively was charged with notice before title to him was recorded that the plaintiffs and appellants were claiming legally whatever their right in the title might be. So knowing, the defendants have no claim for moneys paid or improvements erected, as they did not act in good faith, and the citations of authorities upon these points made by learned counsel for appellees are not in point, because not applicable to the facts of the case.

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JUDD & DETWEILER, INC.,
PRINTERS,
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Office Supreme Court, U. S.
FILED.

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JAMES H. MCKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 95.

RAFAEL ENRIQUEZ, IN HIS OWN NAME AND AS ADMINISTRATOR OF THE ESTATE OF ANTONIO ENRIQUEZ, DECEASED, ET AL., APPELLANTS,

vs.

FRANCISCO SAEZ CO-TIONGCO, FLORENCIA VICTORIA, FRANCISCO ENRIQUEZ, AND CHO-JAN-LING.

ON APPEAL FROM THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

BRIEF FOR APPELLEES.

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ON APPEAL FROM THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

BRIEF FOR APPELLEES.

Statement of the Case.

September 21, 1900, Rafael Enriquez, for himself and as administrator of the estate of Antonio Enriquez, deceased, and Trinidad Enriquez, Antonio Enriquez, Cayetano Enriquez, and Antonio Gascon, a minor, filed complaint in the

Court of First Instance of the District of Binondo, City of Manila, Philippine Islands, against Florencia Victoria Mendoza, as widow and testamentary executrix of Moreno Lacalle, deceased. The defendant demurred to the complaint. The cause was transferred to the Court of First Instance of the District of Intramuros, City of Manila, and by order of November 9, 1901, the demurrer was overruled. On appeal to the Supreme Court of the Islands, the order was affirmed October 17, 1901 (R., 1-9).

Amended and supplemental complaints were filed, respectively, April 28, 1902, and February 10, 1904, in which Francisco Enriquez, Francisco Saez Co-Tiongeo, and Cho-Jan-Ling were named as additional defendants (R., 9-14). A brief summary of the several complaints will suffice to show the basis of the suit and the character of relief sought. Omitting matters of incidental or minor importance, it is alleged in substance:

That Antonio Enriquez and Ciriaca Villanueva Enriquez, his wife, during the time of their married life became the owners in conjugal partnership, together with other property, of a certain parcel of real estate in the city of Manila, consisting of a lot and building thereon known as the "Old Theatre," valued at \$50,000, United States currency (R., 14-17); that Ciriaca died in 1882, intestate, and Antonio died in 1884, leaving a will whereby he devised all his property to his surviving children, share and share alike; that the plaintiff Rafael Enriquez and the defendant Francisco Enriquez, with others named, are the children and heirs-at-law of the said Antonio and Ciriaca (R., 14-15):

That upon the death of Antonio Enriquez differences arose between Francisco, the executor under the will, and the other heirs, and with the view to a settlement of such differences the heirs entered into a written agreement April 28, 1891, for partition of the estates to be made by Jose J. de Icaza and Jose Moreno Lacalle, and for the arbitration of

all matters of dispute by the two persons named and one Cayetano Arellano (R., 1-2, 9) ;

That before partition and settlement were completed Jose J. de Icaza died, and thereafter, on August 25, 1897, at the suggestion of Lacalle, another agreement was made to the effect that the surviving arbitrators should pass upon all differences that might arise; but Arellano declined to act, and subsequently, in view of a criminal complaint filed by the plaintiff Rafael, charging the executor with criminal misconduct in connection with the estates, Lacalle resigned his trust on the ground that the opposition from Rafael made it impossible for him to go on with the partition proceedings (R., 2-3) ;

That on December 29, 1898, Lacalle brought an executory action against Francisco, the executor, to recover the sum of 6,290 pesos alleged to be due on account of professional services as a lawyer, rendered under the agreements to the executor and the other parties interested in the property of the estates; that upon the death of Lacalle, which occurred soon thereafter, his widow, the defendant Florencia Victoria, as testamentary executrix, was substituted in his stead as plaintiff in the action; that Francisco Enriquez failed and refused to defend the action, and allowed judgment to go by default for the full amount of the claim and costs (R., 3-4, 10) ;

That to satisfy the judgment the property known as the "Old Theatre" was, on September 10, 1900, sold under execution to the defendant Francisco Saez Co-Tiongco, who subsequently transferred the property to the defendant Cho-Jan-Ling (R., 3-4, 10, 16-18) ;

That the alleged basis of the executory action was not an obligation incurred by Antonio Enriquez or by Ciriaca, his wife, in the lifetime of either, or an obligation incurred by the estate of either after their death, and the alleged professional services were not rendered by virtue of an order of

any court having jurisdiction over the affairs of the estates (R., 7, 11, 17);

That the plaintiffs and other children and heirs-at-law of the said Antonio and Ciriaca became, upon the death of Antonio, and have been since and are now the legitimate owners of the property sold in the executory action; that the alleged purchases by the defendants Saez Co-Tiongco and Cho-Jan-Ling, respectively, were made with knowledge by each of them of the rights of the plaintiffs to the property and of the pendency of this action (R., 18).

The prayer of the complaint is that the judgment be declared null and void; that the sale of the property to Co-Tiongco, and the subsequent transfer by him to Jan-Ling, be each declared null and void; that the property be adjudged to belong to the plaintiffs and the estate of Antonio Enriquez, and that general relief be granted (R., 8, 12, 18).

The defendant Florencia Victoria answered the amended complaint and later demurred to the supplemental complaint, which demurrer was overruled (R., 12, 21, 22). In her answer she admits her connection with the executory action and also the sale of the property in question to satisfy the judgment therein. She avers that the claim sued on was for professional services rendered by Lacalle to the estates, and for the exclusive benefit of the estates, and not for services to Francisco Enriquez in his own right; that no order of the court was necessary, since under the will of Antonio Enriquez and by agreement of the plaintiffs the estates were to be settled extrajudicially, through the aid of Lacalle; and that the claim was acknowledged as just by Francisco Enriquez and also by his co-heirs who did not defend or oppose the executory action. She denies all other material allegations of the complaint (R., 12-14).

The defendants Francisco Saez Co-Tiongco and Cho-Jan-Ling filed separate answers, each alleging, in substance, that his purchase of the property was made in good faith, without knowledge of any irregularity in the proceedings; that the

plaintiffs did not intervene or otherwise avail themselves of proper legal remedies to prevent the sale; that after the sale the plaintiffs brought an action wherein they sought to repurchase the property, but the court held they were not entitled to repurchase and judgment was rendered against them, from which no appeal was taken, and the matter has therefore become *res adjudicata*. Cho-Jan-Ling further alleges that since his purchase of the property the building on it was demolished by order of the municipal authorities of Manila, and he has erected thereon a new building at the cost of 120,000 pesos (R., 19-21).

At the trial a large amount of evidence, mostly documentary, was submitted (R., 22-39, 59-188).

May 31, 1906, the Court of First Instance entered judgment dismissing the complaint. The findings of fact and conclusions of law are set forth at length in the decision. The material findings of fact, quoted in part and in part stated in substance, are as follows (R., 41-44):

“ That Antonio Enriquez y Sequera died in the year 1884, and that his wife Ciriaca Villanueva died in the year 1882;

“ That from the death of his wife until his own death the said Antonio Enriquez y Sequera administered their joint estate by himself personally, or by his agent;

“ That the said Antonio Enriquez y Sequera and said Ciriaca Villanueva acquired during the existing of the marriage contract between them the real property described in the complaint and known as ‘El Teatro Viejo,’ and thus was community property, and as such was administered with other by said Antonio Enriquez y Sequera after his wife’s death, until he died as before stated;

“ That when the said Antonio Enriquez y Sequera died he left a will, in which he named in the first place Ciriaca Villanueva, his wife, as executrix, in the second place the defendant Francisco Enriquez, and in the third place the plaintiff Rafael Enriquez, and his wife, Ciriaca Villanueva having already

“died at the time of the death of Antonio Enriquez y Sequera, the defendant Francisco Enriquez entered upon the administration of his estate as executor under the will, including the community interest of the estate of the said Ciriaca Villaneuva, who died intestate;

“That on the 30th day of April, 1886, the defendant Francisco Enriquez was appointed by the Court of First Instance of the city of Manila general administrator of the estate of the said Antonio Enriquez y Sequera, which still included the estate or community interest of Ciriaca Villaneuva, which appointment directed him to proceed in the administration of the estate in accordance with the terms of the codicil to the will before mentioned, which required that the estate should be administered extrajudicially, and that the executorship might be extended as long as necessary. The appointment grants unusual powers to the administrator, among others, to perform all acts judicially and extrajudicially necessary for the administrator of the estate;

“That the defendant Francisco Enriquez continued the administrator of the estate of said Antonio Enriquez, including the interest of Ciriaca Villaneuva, until May, 1901, with the exception of a short time in the month of May, 1900, while he was in prison temporarily, during which period the plaintiff, Rafael Enriquez, administered as special administrator, having been appointed such by the court;

“That in May, 1901, the plaintiff Rafael Enriquez was regularly appointed administrator by the court, and entered upon his duties and has continued as such administrator since;

“That in the early part of the year 1899 an action was begun by Jose Mareno Lacalle, through his authorized agent, against the defendant Francisco Enriquez as administrator of the estate, to recover the amount alleged to be due him for professional services performed in connection with the administration of said estate, the account for services showing that they had been performed at the request of

“said Francisco Enriquez, Rafael Enriquez, who was
 “present in Manila, in his own interest and those of
 “the other plaintiffs, in relation to the estate, and
 “Antonio Enriquez, one of the plaintiffs and one of
 “the heirs to the estate, of said Antonio Enriquez y
 “Sequera and Ciriaca Villanueva.

“In that action the defendant Francisco Enriquez
 “was called upon by the Alguazil of the port to an-
 “swer in relation to said claim, and to pay the same,
 “and his statement was subsequently taken by the
 “court, in which he admitted his inability to pay
 “the claim, and indicated the property described in
 “the complaint in this action as property belonging
 “to the said estate, which might be sold under execu-
 “tion to satisfy the debt.”

That the defendant having been cited to appear and failed to do so, was declared in default and judgment was entered against him, from which no appeal was taken; that on June 2, 1900, Lacalle having died, Florencia Victoria, his executrix, was substituted as plaintiff in the action; that commissioners were appointed to appraise the property; the appraisement was made and the property sold at public auction to the defendant Francisco Saez Co-tiongco, the highest bidder, for the sum of 33,915 pesos, being 700 pesos more *than* the appraised value.

“That some time before the sale was made the
 “plaintiff Rafael Enriquez, in the capacity as ad-
 “ministrato^r of said estate, and as a representative
 “of certain of his brothers and sisters and the minor
 “plaintiff, Antonio Gascon, attempted to intervene in
 “the matter, and finally filed their protest against
 “the sale on the date of the sale, at 8:30 in the
 “morning, the sale taking place at ten o'clock;

“The protest was not considered then, as copies
 “had not been made, except that the court ordered
 “them to present a copy;

“That the balance of the purchase price over the
 “deposit made by the purchaser before the sale hav-
 “ing been paid in to the court, the court paid the

“lien upon the property held by the ‘Obrias Pias,’
 “and the lien was canceled, and paid the amount
 “due upon the judgment in favor of the said Lacalle
 “which had been approved by the defendant Francisco Enriquez, and ordered by the court, including
 “costs, and the balance received from the sale was
 “deposited in the Monte de Piedad.

“That it appears from the order of the court, made
 “on or shortly after October 3rd, 1900, that the
 “said Francisco Enriquez not issuing the deed of sale
 “of said property to the purchaser, the court ordered
 “that the proper documents of the judicial sale be
 “made, and official copies given to the purchaser,
 “which was done, and the purchaser, the defendant
 “Francisco Saez Co-Tiongco, was given possession
 “of the property, and the sale was recorded in the
 “Registry of Property, and that the purchaser did
 “not then know there was any question about the
 “sale of the property, or that the plaintiff Rafael
 “Enriquez, and his co-heirs, were protesting the sale;

“That the plaintiffs herein, having knowledge of
 “the entry of judgment in favor of said Lacalle,
 “through his executrix, and of the sale of said property,
 “did not appeal therefrom, nor was any appeal
 “made, but the plaintiffs herein, recognizing said
 “sale on the 25th of September, 1900, commenced
 “an action in the Court of First Instance against
 “the defendant Francisco Saez Co-Tiongco to take
 “back the property sold, the plaintiff Rafael Enriquez
 “having before borrowed the money to deposit
 “in court, for the purchaser, the defendant Francisco
 “Saez Co-Tiongco, as the price of repurchase
 “the amount which he the said purchaser had paid;

“That this action was prosecuted to a finality, and
 “judgment entered on the 20th day of September,
 “1901, dismissing it, from which judgment no appeal
 “was taken;

“That in July, 1902, the owners of the property
 “were ordered by the authorities of the city of
 “Manila to remove the buildings then on said property,
 “they having been condemned, which was
 “done and another building was erected thereon of
 “great value by the defendant Cho-Jan-Ling;

"That after this action was commenced the notice of *his pendens* as to said property was made and delivered to the Chief of the Bureau of Registry of Property, personally, but the notice was not filed in the Registry until after Cho-Jan-Ling had purchased said property from the defendant Francisco Saez Co-Tiongco and the property had been transferred to and possession thereof had been delivered to him, the said Cho-Jan-Ling, and that he, Cho-Jan-Ling, had no notice of claim or protest against his grantor's title."

The court's conclusions of law material to be stated were as follows (R., 44-45):

"That the estate administered by the defendant Francisco Enriquez, as the executor under the will of his father, Antonio Enriquez y Sequera, included the community interest therein of his mother, Ciriaca Villanueva, who died previous to the death of his father, incurred a liability partly by the direction of the said executor and partly by the plaintiffs herein, who are joint heirs to both interests in the property, and the whole property administered upon was responsible for the satisfaction of the liability, and judicial proceedings having been begun for the satisfaction of the liability, and judgment entered against the administrator of the estate, that the property belonging to the estate, including the community interest aforesaid, might be sold for the satisfaction of the judgment, and that the sale thus made by order of the court entering judgment, is valid, particularly when a large part of the proceeds of the sale were applied in extinguishing a community debt, incurred during the lifetime of both parties to the community;

"That Francisco Enriquez, as executor of his father's estate, was properly administrator thereof, including the community interest therein of his mother, Ciriaca Villanueva, the community property never having been partitioned

“and the community interest of his mother being administered by his father at the time of his death,—at the time of the commencement of the ‘*juicio ejecutivo*’ and entry of judgment thereunder, as related in the finding of fact herein, particularly when his father’s will provided for all necessary extension of time in closing the administration of the estate, and when he had been appointed administrator by the court having jurisdiction thereof, and as such was the proper person against whom to bring the ‘*juicio ejecutivo*’;

“That while the parties may not be estopped by entry of judgment in ‘*juicio ejecutivo*,’ and may again investigate the matter by proceedings at law, and while the plaintiffs might have been entitled to intervene in the ‘*juicio ejecutivo*,’ yet they having notice are estopped from setting aside the sale ordered, when they failed to appeal from the judgment of sale, and the sale was perfected, and an innocent purchaser intervened, particularly when they recognized the sale by bringing action for the repurchase of the property sold, as persons interested therein;

“That the judgment of sale made by the court in the ‘*juicio ejecutivo*’ was not void, and cannot now be so declared, but might be voidable by proper proceedings had in the action wherein the parties to the judgment entered are still parties;

“That the defendant Francisco Saez Co-Tiongco having purchased and taken possession of the property in question at a judicial sale, without notice of claim or protest against it, is an innocent purchaser thereof;

“That the defendant Cho-Jan-Ling having purchased from the defendant Francisco Saez Co-Tiongco, and taken possession of the property in question, without notice of any irregularity in the title of his grantor, and without notice of pending action, is an innocent purchaser and holder thereof;

“That the innocent purchaser having paid the purchase price, cannot be deprived of the property

“purchased, by the plaintiffs, at least without the re-
 “turn of the purchase price, and being reimbursed
 “for expenditures made and losses incurred, which
 “the plaintiffs have not proposed to do;
 “That the plaintiffs are not entitled to any of the
 “relief prayed for in their complaint.”

The plaintiffs excepted. They also moved the court to strike out the conclusions of law and the judgment, and to enter judgment in their favor on the ground that the conclusions and judgment were contrary to the findings of fact. The motion was overruled and exception taken (R., 45-46). They then moved to set aside the judgment and for a new trial on the grounds (R., 46) that—

“1. The evidence is not sufficient to justify the
 “judgment of this court.

“2. The conclusions of law are plainly and mani-
 “festly against the weight of the evidence.

“3. The judgment of this court is contrary to
 “law.”

The motion was overruled, and upon a bill of exceptions, duly allowed, the plaintiffs appealed to the Supreme Court of the Islands (R., 46-48).

January 25, 1908, the Supreme Court affirmed the judgment below. The principal questions were stated to be (1) whether the claim of Lacalle was an obligation against the two estates, or only against the persons who contracted with him; (2) whether, if an obligation against the estates, the action should have been brought against the heirs and not against the executor, and (3) whether, inasmuch as the action was brought against the executor of the estate of Antonio Enriquez, the judgment therein could, in any event, bind the estate of Ciriaca Villanueva Enriquez.

The court stated and held as follows (R., 49-53):

“That the services were performed as claimed,
 “and that they were of the value stated in the ac-

“count, and that the estates of Don Antonio and of
 “Dona Ciriaca, or the heirs interested therein were
 “responsible for the payment of this debt, are facts
 “all clearly established by the evidence. In fact, at
 “one of the meetings held in the office of Sr. Moreno
 “Lacalle on the 23rd day of October, 1897, at which
 “were present Don Francisco, Don Antonio (the
 “son), and Don Rafael, who represented all of the
 “plaintiffs, it was agreed that the property here in
 “question should be sold for the purpose, among
 “others, ‘2. To pay the fee of Attorney Jose Moreno
 “Lacalle, for his services in connection with the
 “liquidation and partition of the said estate.’ This
 “indicates why Don Francisco pointed out this build-
 “ing as property which might be levied upon to pay
 “the debt here in question.

* * * * *

“ (1) The appellants in their brief cite cases from
 “the American courts to the point that a debt con-
 “tracted after the death of the testator is not binding
 “upon his estate. The same doctrine as applied to
 “lawyers has been held by this court in the case of
 “*Escueta vs. Juliong*, 5 Phil. Reps., 405, and *Gon-*
 “*zales vs. del Rosario*, 7 Phil. Reps., 140. But these
 “decisions related to the present system of adminis-
 “tering estates, as established by the Code of Civil
 “Procedure now in force, and the cases cited by the
 “appellants arose in States where a similar system
 “was in force. They have nothing to do with the
 “method of administering estates of deceased persons
 “which was in force here prior to the adoption of
 “the present Code of Civil Procedure. In the case
 “at bar, the will provided as follows:

“ ‘It is likewise his will that the inventory, valua-
 “tion, and partition of this estate be made extra-
 “judicially and by virtue of the power which the
 “law grants him, he forbids any judicial interfer-
 “ence in the settlement thereof, conferring upon his
 “executors the necessary authority therefor, with-
 “out any restriction whatever, and extending their
 “term of office for such period as may be required
 “for this purpose.’

" Under the Spanish Law of Civil Procedure such a prohibition was lawful only when the testator by his will appointed executors with full power to do all that was necessary for the settlement of the estate, as the testator did in this case. (Art. 1028, Code of Civil Procedure.)

" When the transaction here in question took place, there was no judicial proceeding of any kind pending for the settlement of either the estate of Dona Ciriaca or the estate of Don Antonio. In fact, this was distinctly held by the Court of First Instance of Intramuros in its order of the 17th of November, 1899, presented as evidence by the plaintiffs, in which it denied the application of Don Francisco Enriquez to have the partition made by him approved. The court there said: 'The procedure set forth in section 1069 with reference to the opposition of the heirs does not apply in this case, because such procedure is peculiar to actions for probate, and both by agreement of the parties and the testator's prohibition, the action herein instituted is not of that nature.'

" That under the law existing prior to the promulgation of the present Code of Procedure this contract bound the two estates in question, there can be no doubt.

" (2) The next question presented is this: In order to bind the estate of Don Antonio Enriquez, was the action of Don José Moreno Lacalle properly directed against Don Francisco Enriquez as executor of his father's estate?

" As has been said before, there was no judicial proceeding pending and the powers of the executor and administrator were ample to do everything necessary for the liquidation of the inheritance. The obligation was an obligation against the estate itself. The only legal representative of that estate was Don Francisco Enriquez, and he was the person against whom any demand by a third person against it should be directed. Nothing to the contrary is held in the two decisions of the Supreme Court of Spain cited by the appellants. In the judgment of the 16th of March, 1864, the testator

“gave directions to his heir that she pay an allowance to ‘A.’ It was held that the action to recover this allowance should be directed against her and not against the executor. In the judgment of the 8th of April, 1865, the action was in fact directed against the heirs and not against the executor, and the question here suggested was not discussed. So that, so far as the estate of Don Antonio Enriquez is concerned, the action against it was properly directed against Don Francisco Enriquez, as executor, and the judgment rendered in that action is binding upon the estate and upon the heirs interested therein.

“(3) The principal reliance of the appellants is upon the proposition that the property here in question belonged to the conjugal partnership, and that upon the death of Dona Ciriaca Villaneuva, one-half thereof passed immediately to the heirs and that they became the owners thereof, and that Don Francisco Enriquez, never having been appointed administrator of this estate, the judgment rendered against him as executor of his father’s estate was not binding upon the interest of the heirs of Dona Ciriaca.

“When a conjugal partnership is dissolved by the death of the husband, it has already been held by this court that the settlement of the affairs of that partnership must be had in the probate proceedings for the settlement of the husband’s estate. That is, that the husband’s estate and the conjugal partnership must all be settled in one judicial proceeding and that the administrator of the husband’s estate is the administrator of the affairs of the conjugal partnership. (*Alfonso vs. Natividad*, 6 Phil. Reps., 240; *Prado vs. Lagera*, 7 Phil. Reps., 395, and *de la Rama vs. de la Rama*, 7 Phil. Reps., 745.)

“In the case of *Alfonso vs. Natividad*, the court said: ‘The question whether or not this rule for the settlement of the affairs of the conjugal partnership, when it is dissolved by the death of the husband is equally applicable when the partnership is dissolved by the death of the wife, we do not con-

“sider.’ It is necessary now, however, to resolve that question.

“The husband is by law the manager of the conjugal partnership (Art. 1412 of the Civil Code). His debts, contracted during marriage, are its debts (Art. 1408). Upon the death of the wife, he becomes the surviving partner and we do not doubt he is the person called upon to settle the affairs of the partnership. It could not have been intended that upon the death of the wife, leaving the husband surviving, the property which the husband had administered and in which he was directly interested, should be taken out of his hands and delivered over to an administrator appointed in proceedings for the settlement of his wife’s estate, and we hold that where a conjugal partnership is dissolved by the death of the wife, the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated.

“It follows from this holding, and from the holding already made in the case of *Alfonso vs. Natividad*, that when the husband, who is the administrator of the affairs of the conjugal partnership, the wife having died, himself dies, his executor or administrator becomes not only the executor or administrator of the property of the husband, but also the administrator of the affairs of the conjugal partnership and that he is the legal representative of that conjugal partnership.

“The case of *Alfonso vs. Natividad* was an action brought by the administrator of the husband’s estate to recover possession of real property which had belonged to the conjugal partnership, and we held that that action could be maintained not only in respect to the interest of the husband, but also in respect to the interest of the wife. In other words, we held that the representative of the husband was the legal representative not only of the interest of the husband but also of the interest of the wife. That decision practically controls this case.

“Upon the death of *Dona Ciriaca Villanueva*, Don

“ Antonio Enriquez became the legal administrator
 “ of the affairs of the conjugal partnership. Upon
 “ his death, Don Francisco Enriquez became the legal
 “ administrator of such property and when the com-
 “ plaint of Don José Moreno Lacalle was directed
 “ against Don Francisco Enriquez, as the executor of
 “ his father’s estate, it was as a matter of law directed
 “ against him also in his capacity as the administrator
 “ of the conjugal partnership, and the judgment ren-
 “ dered against him bound not only the interest of
 “ Don Antonio in the property in question, but also
 “ the interest of Dona Ciriaca.

“ That Don Francisco was in fact the administra-
 “ tor of both estates from the death of his father is
 “ practically admitted by the appellants. It is to be
 “ noted, moreover, that when, on May 14, 1900, Don
 “ Rafael was appointed by the court provisional ad-
 “ ministrator on account of the criminal proceedings
 “ against Don Francisco, the appointment in terms
 “ expressly related to both estates.”

The plaintiffs thereupon moved for rehearing. The motion was denied, and they appealed to this court (R., 53-54), making the following assignment of errors (R., 55):

I.

That the court erred in affirming the judgment of the Court of First Instance dismissing plaintiff’s action;

II.

The court erred in holding that the estates of Antonio Enriquez and of Dona Ciriaca Villanueva, or the heirs interested therein, were responsible for the payment of the debt upon which Francisco Enriquez was sued as executor and administrator by José Moreno Lacalle;

III.

The court erred in holding that the property in question in this suit was legally sold under and by virtue of the judgment and execution in the case of José Moreno Lacalle against Francisco Enriquez, as executor and administrator;

IV.

The court erred in holding that Francisco Enriquez was at any time administrator (administrador) of the estates of either Antonio Enriquez or Da. Ciriaca Villanueva;

V.

The court erred in refusing to declare void the sale made by the Court of First Instance of Manila of the property in question in this suit to Francisco Saez Go-Tiongco;

VI.

The court erred in holding that under the law as it existed in the Philippine Islands prior to the change made under American sovereignty, real property of estates of deceased persons could be sold under execution without giving the heirs an opportunity to be heard.

VII.

The court erred in rendering judgment acquitting defendants of plaintiffs' complaint.

ARGUMENT.

I.

The first and seventh assignments are inerely formal. Of the others, orderly discussion suggests that the fourth be first considered. It raises the question of representation of the two estates in the executory action to recover the Lacalle claim. The action ran against Francisco Enriquez "in his capacity as executor and administrator," and the judgment was against him accordingly (R., 117, 123). That he was the lawfully constituted executor of his father's estate is shown by the will (R., 93), by the record of his qualification as executor April 30, 1886 (R., 134-135), and by the findings of fact by the trial court (R., 41-42), which were on appeal accepted by the Supreme Court of the Islands (R., 51). It was stipulated at the trial that he continued as executor, with the exception of a very brief period of no consequence here, from the time of his acceptance of the trust until March 11, 1901 (R., 37).

The trial court held that Francisco Enriquez, as executor of his father's estate, was administrator of the community interest of his mother included therein (R., 41-44). The Supreme Court held that upon the death of the wife the husband became the legal administrator of the affairs of the conjugal partnership, and that upon his death his executor became the legal administrator of the conjugal property. The court further said: "That Don Francisco was in fact the administrator of both estates from the death of his father is practically admitted by the appellants" (R., 52-53). It abundantly appears from the record that such was the fact. Every act of administration by Francisco, and indeed his entire dealings in the premises for purposes of administration and partition, were with respect to the two estates as one. The conduct of the plaintiff Rafael and of the other heirs

was of like character. The agreements for partition entered into between them and the executor April 22, 1891, and August 25, 1897, respectively, each related to and in terms embraced both estates (R., 183-188). The plan of partition submitted by the executor, which he sought to have approved by the court, included the property of both estates (R., 107-110). The appointment of Rafael Enriquez as provisional administrator May 14, 1900 (under which he served only a few days), and his appointment as permanent administrator March 11, 1901, in express terms related to both estates (R., 53, 104-106). Other facts of the same import might be referred to. The record throughout supports the proposition. The estates of the two decedents embraced only community property. There was no property to be administered other than that of the conjugal partnership, and there has been no separate administration of the estate of the wife at any time. The plaintiff Rafael Enriquez testified as a witness that upon the death of his father the estates were merged, and that at the time of the trial he, as administrator, was administering both estates together (R., 38).

The findings of the trial court show that all the acts of administration down to the time of the bringing of this suit related to and in fact embraced the property of both estates. In this respect, as in others, the findings were accepted by the Supreme Court on appeal. Indeed, on the state of the record, such findings were not reviewable by the Supreme Court. Section 497 of the present Code of Civil Procedure (Act No. 190 of the Philippine Commission) provides that

"the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except,

* * * "3. If the excepting party file a motion in the Court of First Instance for a new trial, upon the ground that the *findings of fact were plainly and manifestly against the weight of evidence*, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence," etc.

The plaintiffs did move for a new trial in the Court of First Instance, but the motion was upon the ground that the court's "conclusions of law" were "plainly and manifestly against the weight of the evidence." This was not a compliance with the statute such as to justify a review of the evidence by the Supreme Court. But even if it were it could avail the appellants nothing, for the reason that there was no difference of opinion between the Court of First Instance and the Supreme Court on questions of fact. As far as the facts are stated by the Supreme Court they are in harmony with the findings below, and these concurrent conclusions are controlling here. In *Beyer vs. Lafevre* (186 U. S., 114, 119) it was held to be "well settled that when the trial and the appellate courts agree as to the facts established on the trial this court will accept their conclusions and not attempt to weigh conflicting testimony." To the same effect is the holding in *De La Rama vs. De La Rama* (201 U. S., 303-309). The rule applies all the more strongly in this case, for the reason that the testimony is not conflicting.

The Spanish law provides (Civil Code, Art. 1407) that—

"All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife."

There is no question that the property which is the subject of this controversy belonged to the conjugal partnership. Indeed it is expressly so declared in the will (R., 93-94). The Spanish law also provides (Civil Code, Art. 1412) that—

"The husband is the administrator of the conjugal property with the exception of what is prescribed in article 59."

Article 59 declares that—

"The husband is the administrator of the property of the conjugal partnership, except where the contrary is stipulated and in the case of article 1384."

Article 1384 declares that—

“The wife shall have the management of the paraphernal property unless she has delivered the same to the husband, before a notary, in order that he may administer said property.”

By article 1408 it is provided that—

“The conjugal partnership shall be liable for:
 “1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in cases in which she can legally bind the partnership.” * * *

Article 1418 provides that “upon the dissolution of the partnership an inventory shall immediately be made.”

Section 685 of the present Code of Civil Procedure (Act No. 190, *supra*) provides as follows:

“SEC. 685. Community property.—One-half the community property, as determined by the law in force in the Philippine Islands before the 13th day of August, 1898, belonging to a husband and wife, shall be deemed to belong to the deceased husband or wife, and shall be inventoried and accounted for, and distributed as a part of the estate, in the same manner as all other property belonging to the estate.”

Several of the above-quoted provisions, including the one last stated, were considered by the Supreme Court of the Islands in the case of *Alfonso vs. Natividad et al.* (6 Phil. Rep., 240). That was a case where the conjugal partnership was dissolved by the death of the husband, and one of the questions was whether the administrator of the husband's estate was the proper person to administer the affairs of the partnership. The court held he was. In the course of its opinion, after stating that the Spanish Civil Code makes no express provision on the subject (p. 242), and referring to

section 685 of the present Code of Civil Procedure, the court said (pp. 243-4, 245) :

" This section cannot be so construed as to require
 " one-half of the property of the conjugal partner-
 " ship to be inventoried as the exclusive property of
 " the deceased spouse before any settlement of the
 " affairs of the partnership. Such a construction
 " would be in direct violation of the law, which re-
 " quires that the partnership property be used to pay
 " its debts, and provides that one-half of the net
 " proceeds only belong to each spouse. (Art. 1426,
 " Civil Code.) This section (685) must mean that
 " when the partnership affairs have been settled, and
 " all its debts and obligations discharged, then one-
 " half of the net proceeds shall be considered as the
 " exclusive property of the deceased spouse.

" By the provisions of the new Code of Civil Pro-
 " cedure in the settlement of estates of deceased per-
 " sons it is necessary to appoint commissioners, be-
 " fore whom the creditors of the deceased must pre-
 " sent their claims within a time fixed by the court.
 " The husband is the administrator of the conjugal
 " partnership. (Art. 1412.) His debts contracted
 " during the marriage are its debts. (Art. 1408.)
 " When a conjugal partnership is dissolved by the
 " death of the husband it would be extremely difficult
 " to settle his estate in accordance with the provisions
 " of the present Code of Procedure without settling
 " the partnership affairs. It is difficult to harmon-
 " ize the new system with that part of the old which
 " remains, but we conclude that when the partnership
 " is dissolved by the death of the husband the in-
 " ventory which is mentioned in article 1418 should
 " be made and the partnership affairs settled in the
 " Court of First Instance which takes jurisdiction of
 " the settlement of his estate, and in the same pro-
 " ceeding. This view being adopted, it follows as a
 " necessary consequence that the executor or admin-
 " istrator appointed in that proceeding must be the
 " person who is entitled to the custody of the property
 " of the conjugal partnership while the settlement is
 " being made."

* * * * *

"The question whether or not this rule for the settlement of the affairs of the conjugal partnership when it is dissolved by the death of the husband, is equally applicable when the partnership is dissolved by the death of the wife, we do not consider."

The question came again before the same court in the case of *Prado vs. Lagera* (7 Phil. Rep., 395), and the principle was there reaffirmed and applied.

The only difference between those cases and the one at bar, so far as the question under consideration is concerned, is that here the conjugal partnership was dissolved by the death of the wife, whereas in each of those cases the dissolution was caused by the death of the husband. In its opinion in this case the Supreme Court of the Islands cited the *Alfonso-Natividad* case, *supra*, and, reasoning from the principle there announced, held that upon the death of the wife the husband, being the surviving partner, was the person called upon to settle the affairs of the partnership, and that when the husband died his executor became the administrator of the affairs of the partnership and the legal representative of the partnership. This seems to be the settled doctrine of the Spanish law, and it is but the natural and logical outcome of the provisions cited from the civil code.

The earlier statutes of the State of California relating to community property were similar to the Spanish law. Thus section 2, ch. 103, California Statutes of 1850, provided that—

"All property acquired after the marriage by either husband or wife, except such as may be acquired by gift, bequest, devise, or descent, shall be common property."

Section 11 of the same act provided that—

"Upon the dissolution of the community by the death of either husband or wife, one-half of the common property shall go to the survivor and the

“other one-half to the descendants of his deceased husband or wife, subject to the payment of the debts of the deceased. If there be no descendants of the deceased husband or wife, the whole shall go to the survivor, subject to such payment.”

Johnston vs. San Francisco Savings Union (75 Cal., 134) was a case where the community was dissolved by the death of the wife. One of the questions was whether the husband, as survivor of the partnership, or the probate court, should control the administration of the estate of the deceased wife. On that question the court stated and held as follows (pp. 142, 143):

“The wife having died while the act of 1850 was in force, that act must govern the case. The construction which it received was that the death of the wife did not release any portion of the property from liability to be taken for community debts, and that her descendants took it, subject to the payment of such debts; that no probate administration of the estate of the deceased wife was necessary, but that the husband had control of the property as survivor of the marital partnership for the purpose of settling up its affairs: See *Packard vs. Arellanes*, 17 Cal., 536; *Ord vs. De la Guerra*, 18 Cal., 67; *Cook vs. Norman*, 50 Cal., 637.”

The cases cited in the court's opinion fully sustain the principles announced. In *Packard vs. Arellanes* it was held that upon the dissolution of the community by the death of the wife the husband has the exclusive right, in his capacity as survivor, to administer the community property, and that the wife's interest therein is not subject to administration under the laws for the settlement of estates of deceased persons. *Ord vs. De la Guerra* and *Cook vs. Norman* are to the same effect.

Texas is another State where the community principle as to property acquired during coverture prevails. By article

2968 of Batt's Anno. Civil Stats. (vol. II) it is provided that—

“All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, shall be deemed common property of the husband and wife,” etc.

In *Moody vs. Smoot* (78 Tex., 119), a case involving community property, it was held that upon the death of the wife the husband occupies the relation of surviving partner in an ordinary partnership, and has the right to administer the community property without interference on the part of the wife's representatives. There are many other Texas cases which hold to the same effect. Some of them are: *Johnson vs. Harrison*, 48 Tex., 257, 268; *Wenar vs. Stenzel*, 48 Tex., 484, 489; *Sanger vs. Moody*, 60 Tex., 96, 101-102; *Lumpkin vs. Murrell*, 96 Tex., 51, 58-59; *Carter and Rust vs. Conner*, 60 Tex., 52; *Hollingsworth vs. Davis*, 62 Tex., 438; *Fagan vs. McWhirtin*, 71 Tex., 667.

The community principle prevails in Louisiana also. In the case of the *Succession of Adele Lamm* (40 La. An., 312), both parties to the community were dead and the heirs of both were the same. It was held that both estates should be administered by the administrator of the husband only. The court said:

“Not only is it entirely proper and right that the succession of the husband should embrace that of his deceased partner in community, but two distinct and separate administrations are unnecessary and would occasion increased expenses and litigation.”

As touching the rights and liabilities incident to community property the marital relation has been assimilated in many respects to that of an ordinary partnership. After the dissolution of an ordinary business partnership by the

death of one of the members (if there be only two), the survivor winds up the partnership affairs, collects its demands, and pays its debts; and for the latter purpose may sell, mortgage, or otherwise dispose of the partnership property. The survivor of a conjugal partnership has all the rights and powers of the survivor of an ordinary business partnership (*Carter and Rust vs. Conner*, 60 Tex., 52, 56).

This is true not only in this country, but the principle is recognized in the Spanish law. By article 1395 of the civil code it is provided that—

“The conjugal partnership shall be governed by the rules of articles of partnership in all that does not conflict with the express provisions of this chapter.”

Evidently this means that the rules that govern articles of ordinary business partnerships generally, which have their basis in agreements between individuals, shall likewise govern the conjugal partnership, which is a creature of statute, except when out of harmony with the terms of the statute.

Some of the well-settled rules applicable to partnerships generally are: (1) That partnership property, both real and personal, is liable for partnership debts; *Murrill vs. Neill*, 8 How., 414, 425-426; *Amsink vs. Bean*, 22 Wall., 395, 402-403; *Gainesville Bank vs. Cody*, 93 Ga., 127, 147; *Ex parte Hopkins*, 104 Ind., 157; *Maddock vs. Skinner*, 93 Va., 479; *Conaway vs. Stealey*, 44 W. Va., 163, 171-172; (2) that for the payment of its debts the real estate of a partnership is regarded as personal property, no matter in whom the legal title may be vested; *Rolsky vs. Brown*, 92 Ala., 522; *Bates vs. Babcock*, 95 Cal., 479; *Duncan vs. Duncan*, 93 Ky., 37; *Murrell vs. Mandelbaum*, 85 Tex., 22; *Galbraith vs. Tracy*, 153 Ill., 54; Lindley on Partnership, vol. I, mar. p. 343-344; *Mechem's Elements of Partnership*, sec. III, and (3) that upon the dissolution of the partnership by death of one of the partners the partnership property passes to and vests

in the survivor, to the exclusion of the representatives of the deceased partner, and is held by such survivor in trust for the purpose of paying the debts and winding up the affairs of the partnership; *Bauer Grocer Co. vs. McKee Shoe Co.*, 87 Ill. App., 434; *McCaughan vs. Brown*, 76 Miss., 496-7; *Heath vs. Waters*, 40 Mich., 457; *Case vs. Abeel*, 1 Paige, 393; *Adams vs. Ward*, 26 Ark., 135-8; *McElroy vs. Whitney*, 12 Idaho, 512, 525-6; *Nelson vs. Hayner*, 66 Ill., 487; *Carter and Rust vs. Conner*, 60 Tex., 52, 56; *Lindley on Part.*, sec. 591; *Burdick on Part.*, p. 140; 22 Am. & Eng. Ency. Law, 96, 220.

Within the principle of the rule last stated, it is held that the administrator of the last surviving partner is charged with the duty of completing the settlement of the partnership affairs. In the case of *Galbraith vs. Tracy* (153 Ill., 54) it was held as follows:

“In the event of the death of both the partners
 “before the settlement of the partnership affairs, the
 “administrator of the last survivor stands in the
 “shoes of his intestate, and he is charged with the
 “duty of completing the settlement as a trustee, the
 “relation between him and the legal representatives
 “of the partner first deceased being that of trustee
 “and *cestuis que trust*: *Dayton vs. Bartlett*, 38 Ohio
 “St., 357; *Thomson vs. Thomson*, 1 Bradf., 24;
 “*Brooks vs. Brooks*, 12 Heisk., 12; 17 Am. & Eng.
 “Ency. of Law (1st ed.), 1158.”

The cases cited by the court fully sustain the principle announced. We also cite *Castley vs. Wilkerson*, 49 Ala., 210, 212; *Nehrboss vs. Bliss*, 88 N. Y., 600.

It thus appears that from the viewpoint of the Spanish law, and from the authorities in this country as well, the Supreme Court of the Islands was right in holding in this case that upon the dissolution of the conjugal partnership by the death of the wife the husband, as survivor, became the administrator of the partnership affairs, and that upon

his death, before settlement was completed his executor became the administrator of the conjugal property (and the whole of the two estates was of that character), and was thus the administrator of both estates. It results that the action upon the Lacalle claim was properly brought against the husband's executor, the legal representative of both estates. The estate of the wife was legally represented in the action, and there is no merit in the fourth assignment of error.

II.

The questions presented by the further assignments of error are, (1) whether the Lacalle claim was an obligation against the two estates, consisting solely of the property of the conjugal partnership; and if so, (2) whether the property in question was legally sold in the executory action, to which the heirs were not parties.

The trial court held that the professional services which were the basis of the claim were performed in connection with the administration of both estates, as community property, at the instance and by direction of the executor *and the plaintiffs*, and that the whole property became responsible for the satisfaction of the liability thus incurred. The appellate court stated in its opinion, as "facts clearly established by the evidence," that the services were performed by Lacalle as claimed; that they were of the value stated in the account, and that the estates of both decedents were responsible for the payment of the debt. These rulings, in so far as they embody findings of fact, should be accepted as conclusive. But even if not so accepted, the record indisputably proves that the services were performed in aid of the administration of both estates, as property of the conjugal partnership, and at the request of and by agreement with the executor and the other heirs to the property. We do not understand it to be contended, however, that the facts are not as thus stated. There has been no contention at any

time that the claim was unreasonable or excessive in amount. The contention is that as the debt was contracted after the death of both husband and wife, it was not an obligation against their estates, but against the heirs as individuals.

Whether it is a rule of American jurisprudence that obligations created or assumed in aid of administration are chargeable against the estate only when allowed by order of court is not the question. The principle, even if sound, can have no application to the present case. The question here is to be determined, not by American rules of procedure, but by the Spanish law in force in the Philippines at the time the contract was made and the services performed, which was prior to the enactment of the present Code of Civil Procedure. The method of administration under the Spanish law, as was held in the case of *Alfonso vs. Natividad* (6 Phil. Rep., 24), was very different from that provided in the present Code. And, as in effect held by the appellate court in this case, the provisions of the new Code have nothing to do with the administration of the estates here in question, for the reason that the liabilities in respect thereto and the rights and liabilities of those connected therewith or interested therein arose under the old law.

The codicil to the will of the testator contains the following clause (R., 134):

“It is likewise his will that the inventory, valuation and partition of his estate be made extra-judicially, and by virtue of the power which the law grants him, he forbids any judicial interference in the settlement thereof, conferring upon his executors the necessary authority therein, without any restriction whatever, and extending the term of office for such period as may be required for this purpose.”

It has been already shown that after the wife's death the husband, as administrator of the conjugal property, became the administrator of her interest therein, and that upon his

death his executor, by operation of law, succeeded to the right and duty of administration, with all the powers incident thereto, and without interference on the part of any one who might claim a right of administration upon the wife's interest, in a separate proceeding. There was no property other than that of the conjugal partnership, and when the executor assumed the duties of his office he became and was, under the law, just as truly the administrator of the wife's interest in the property as he was of the husband's. He was in law and in reality the administrator of both estates the same as though they were one. By the terms of the codicil he was directed and required to conduct the administration extra-judicially, and full power and authority were conferred upon him for that purpose, without any restriction whatever. Not only this, but judicial interference was expressly forbidden.

By article 1043 of the Spanish Code of Civil Procedure it is declared that "testamentary proceedings cannot be instituted, if such proceedings have been expressly prohibited by the testator." But in order to make effective such prohibition, and to the end that administration might not be defeated in any case, it is further declared (article 1044) that:

"When the testator has forbidden such judicial interference in his will, * * * it shall be necessary that he shall have appointed one or more persons, duly empowered, so that either in the character of executors, accountants, or in any other capacity they may execute extra-judicially all the operations in the administration of the estate."

In this case the testator, by conferring upon his executor full power and authority in the premises, complied with the conditions necessary to make effective his prohibition of judicial interference. That the prohibition was recognized as effective is shown by an order of the Court of First Instance of November 7, 1899 (R., 107-111), whereby the ap-

proval of a partition of the property submitted by the executor was for that reason refused. No testamentary proceedings for the settlement of the estates were ever instituted, and in view of the provisions of the will no such proceedings could be legally instituted. The responsibility rested with the executor to administer the two estates. He possessed all power and authority necessary to the proper execution of the trust. If professional services of a legal nature were needed he had the authority to contract for them, as was done. Of this there can be no reasonable question. Having such authority, he likewise possessed, as a necessary incident thereto, authority to allow just compensation for the services out of the property which was the subject of administration, namely, the property of the conjugal partnership. Authority to compensate for the services was just as surely present as was authority to engage them. Both were inherent in the situation created by the will. The executor could not apply to the court for assistance, for that was expressly forbidden. In *Armstrong vs. O'Brien* (83 Tex., 635) it was held that executors clothed with general and exclusive powers (such as were conferred in this case) could lawfully employ agents to sell lands of the estate and become responsible for reasonable commissions to be paid out of the funds of the estate. We cite also *Pleasants vs. Davidson* (34 Tex., 459, 462).

It is vain to argue that the property in question was not responsible for the payment of Lacalle's claim for the reason that his employment was not authorized by the court. The court would not and could not have authorized the employment if it had been asked to do so.

A Texas statute (Rev. Stat. 1895, Art. 1995) provides that—

“Any person capable of making a will may so
 “provide in his will that no other action shall be
 “had in the county court in relation to the settle-
 “ment of his estate than the probating and record-

“ing of his will, and the return of an inventory,
“appraisement and lists of claims of his estate.”

In *Lumpkin vs. Smith* (62 Tex., 249) it was held that a will made in accordance with this statute operates to withdraw the entire estate from the jurisdiction and control of the probate court, except under certain conditions otherwise provided for, which are not material here. See also *Smithwick vs. Kelly* (79 Tex., 564; *Dwyer vs. Kalteyer*, 68 Tex., 554).

The State of Washington has a statute (Hill's Anno. Stat. 1891, sec. 995) which declares that—

“In all cases where it is provided in the last will
“and testament of the deceased that the estate shall
“be settled in a manner provided in the last will
“and testament, and that letters testamentary or of
“administration shall not be required, it shall not
“be necessary to take out letters testamentary or of
“administration, except to admit to probate such
“will in the manner provided by existing laws; and
“after the probate of such will, all such estates may
“be managed and settled without the intervention
“of the court, if the said last will and testament so
“provides.”

Certain conditions are stated under which the court may intervene, as, for instance, if the executor refuse to act, or if intervention should become necessary to the proper execution of the trust.

In *Newport vs. Newport* (5 Wash., 114) the court held that where a testator provides by will that the trustees of his estate shall manage and settle the same in the manner directed in his will, without the intervention of the court having probate jurisdiction, the power of such trustees is derived from the will and their duty prescribed by it, and, so long as they faithfully comply with its provisions, their actions cannot be called in question by any court. See also

Miller vs. Borst (11 Wash., 216); 11 Am. & Eng. Ency. Law, 2d ed., 1342.

Article 1064 of the Spanish Civil Code provides that:

“The costs of the division, made for the common
“interest of all the co-heirs, shall be deducted from
“the estate; those made for the particular interest
“of one of them shall be defrayed by the same.”

That services rendered to an executor or administrator in aid of administration are a proper charge against the estate was recognized in the case of *Sy Chung-Quiong vs. Sy-Tiong Tay* (10 Phil. Reps., 141).

In this case the professional services were rendered under agreement not only with the executor, but also with the other heirs, including the plaintiffs in this action. They were all equally interested in the estates and were equally benefited by the services rendered. No question is raised as to the reasonableness of the claim. We submit the debt was a just and lawful charge upon the property of both estates. The contention to the contrary is purely technical and is without foundation in any principle of equity or justice.

Moreover, both the justness of the claim and the liability of the property in question for its payment, were expressly admitted before the executory action was instituted, not only by the executor, but by the other heirs as well. At a meeting held October 23, 1897, at the office of Attorney Lacalle, at which Francisco Enriquez, Rafael Enriquez, their brother Antonio, and said attorney were present, it was unanimously agreed that the “Old Theatre,” the property in question, should be sold to satisfy certain specified debts and “to pay Attorney José Mariano Lacalle for his services in connection with the liquidation and settlement” of the estates (R., 86, 179-180).

The heirs who were not present were nevertheless represented in the agreement. This is shown by a power of attorney under which Rafael Enriquez was acting at the time,

by the terms of which he was authorized, among other things, to agree on behalf of those whom he represented to the sale of such property as might be required to meet the necessary expenses incurred in the administration of the two estates (R., 101-102), and by a stipulation entered into September 11, 1905 (R., 22, 28), to the effect that down to that time the heirs represented by Rafael "absolutely agreed to everything" he had done in the premises, and that the two heirs not represented by him were represented by Francisco. It thus appears that all the heirs were either in person or by legal representation parties to the agreement, and they are therefore bound thereby.

In view of the agreement and stipulation, even though the court be of opinion that otherwise there might have been ground for the technicality insisted upon, we submit the plaintiffs in this action are absolutely and forever estopped to claim any benefit therefrom. They deliberately and solemnly agreed that the debt was a just and lawful charge upon the property, and that the property here in question should be sold to pay it. In the face of all this, they now ask a court of equity to annul the judgment rendered for the debt and to set aside the sale made to satisfy it. They are not in court with clean hands.

III.

It is contended that the sale was illegal because the heirs were not parties to the action in which it was made. To this the principle of estoppel is likewise and equally applicable. Having expressly agreed that the property should be sold for the identical purpose for which it was sold, the plaintiffs can have no standing in a court of equity to attack the sale merely on the ground that they were not made parties to the proceeding. They allege no fraud in the sale, and there is no claim that the property did not bring its full value. In

fact, it sold for considerably more than the value placed upon it by the commissioners appointed by the court (R., 133, 157-158).

But there is nothing in the suggested irregularity. The court below held that when the complaint in the executory action "was directed against Don Francisco Enriquez, as "executor of his father's estate, it was as a matter of law "directed against him also in his capacity as administrator "of the conjugal partnership, and that the judgment rendered against him bound not only the interests of Don "Antonio in the property in question, but also the interest "of Doña Ciriaca." This is in harmony with the Spanish law. We refer to a case decided by the supreme tribunal of Spain, October 6, 1897 (Civil Jurisprudence, vol. 82, p. 390). That was an action for the recovery of a debt against the estate of one Amador Celdran, deceased, and the complaint ran against the widow and executors of the testator. The heirs were not made parties. The executors filed a petition setting forth that three minor heirs interested in the estate had not been cited in the action, and alleging that the proceedings were for that reason irregular and invalid. Judgment was entered, however, and the executors appealed. The appellate court affirmed the judgment, and the executors again appealed. The will of the testator gave specific directions to the executors, and judicial interference was forbidden. The supreme tribunal stated and held as follows:

"Whereas, in the action for execution treated of.
 "instituted and continued against the property of
 "the estate of D. Amador Celdran, his widow and
 "executors had been served with citation from the
 "beginning; and that with the intervention and
 "formal opposition of the latter, as the lady did not
 "appear, all the proceedings have been had without
 "any claim or nullity having been set up until judgment of sale was rendered;

"Whereas, the executors, in order to be able to per-

“form their principal trust, which appears in the last
 “certified clause, have been empowered to represent,
 “as they have in fact represented, the estate afore-
 “said and defend its rights in this case, their per-
 “sonality therefore having been known;

* * * * *

“We declare that we should, and hereby do, de-
 “cide that the remedy interposed by the executors of
 “D. Amador Celdran does not lie, and we condemn
 “them to pay the costs and lose the security or
 “amount given as bond, and which they shall pay
 “when in better circumstances, then distributing the
 “same according to law.”

We refer to another case decided by the same tribunal May 3, 1866 (*id.*, vol. 59, p. 826). There the action was to enforce a claim against the estate of a testator, and the complaint ran against the executor who was also one of the heirs, but the other heirs were not made parties. It was stated and held as follows:

“1st. That while the property of an estate remains
 “undivided, the legal representation of the same be-
 “longs to the executor appointed by the testator, if
 “the latter has conferred on him the necessary
 “powers therefor.

“2nd. That the execution treated of, having been
 “demanded and granted against the succession or
 “estate, and the demand for payment and citation
 “for sale having been made on the son of the de-
 “ceased as heir and executor of the same, and holder
 “of the property, there results that these proceedings
 “were had on the person who has the legal represen-
 “tation of the estate proceeded against under execu-
 “tion, inasmuch as it has been justified by the clause
 “of the will that said appointment of executor was
 “conferred on him, under which capacity he execu-
 “ted the power of attorney in virtue whereof his so-
 “licitor appeared in the case, and it does not appear
 “nor has it been attempted to be proved that the
 “solicitor has ceased to act thereunder, or that the
 “estate has been distributed.

“And 3rd, That for the reasons above set forth it is
 “ not necessary to issue citation to the sale to the other
 “ parties interested in the estate to make the action
 “ valid, and as this appeal is based on the lack of cita-
 “ tion, it does not lie.”

As this decision is directly upon the point here involved we append full translated copy thereof as an appendix to this brief.

But the principle is not confined to the Spanish law. It has been applied in this country also. In *Custer & Rust vs. Conner* (60 Tex., 52), there was a judgment in an action brought after the wife's death against the surviving husband upon a community debt. Execution on the judgment was levied on certain real estate belonging to the community, and the same was sold to satisfy the judgment. The question was whether the sale and sheriff's deed passed the title to the interest of the deceased wife in the property, her heirs not being parties to the action. The trial court held they did not. On appeal, the Supreme Court of the State reversed the ruling and held that the judgment was binding upon the community property, notwithstanding the heirs were not parties to the action, and that the sheriff's deed passed to the purchaser the full and complete title. In the course of its opinion the court said (pp. 55-57) :

“Our court, in determining to what extent the
 “ survivor in community may make use of its assets
 “ to discharge the community debts, as also the right
 “ of creditors to enforce payment of their demands
 “ out of such assets, have assimilated the marital re-
 “ lation in many respects to that of an ordinary part-
 “ nership.

“After the dissolution of a partnership by the
 “ death of one of the members (if there be two mem-
 “ bers only), the survivor winds up its business, col-
 “ lects its demands and pays off its debts; and for the
 “ latter purpose may make use of its means,—sell,
 “ convey, mortgage or otherwise dispose of them.

“A creditor of the partnership need not, in en-

“forcing by suit a firm debt, make any one a party to the suit, except the surviving partner. A judgment against him as such carries with it the right to an execution against the partnership property as effectually as would a judgment against the firm before its dissolution by the death of one of its members. The survivor of the conjugal partnership has all the powers of the surviving member of a commercial firm by our decisions, and is bound by all his obligations.

“On dissolution of a commercial partnership the survivor keeps possession of everything. He has the legal right to the partnership effects. He is a trustee for all concerned in the partnership,—the heirs of the deceased, the creditors of the firm, and himself. *Case vs. Abeel*, 1 Paige, 398; Parsons on Part., 441.

“Suits at law must be brought against the surviving partner alone; and suits to collect debts due to the firm must be brought by him without joining the personal representatives of the deceased partner. Story on Part., 447. In equity such joinders are not prohibited.

“In suits by and against the marital partnership the same rules thus far obtain; but there are some differences in the mode of pursuing remedies both for and against the partnership which have their origin in the differences that exist between the two classes of partnership, and which seem now to be pretty well recognized by our courts.

“The business of the marital partnership is always conducted by the husband; all its affairs are in his name. With occasional exceptions he makes its contracts, incurs its debts, signs its notes to others, and the notes made due to it are made payable to him, and whatever is done in the way of acquiring or disposing of property is nominally done in his name alone.

“Upon the death of the wife, as in the case of the death of a commercial partner, the community estate becomes the property of the survivor and of the children of the deceased wife, subject to such

“ title as vests in a surviving partner for the purposes
 “ of winding up the business of the concern.

“ In conveyances to or by the firm during the ex-
 “ istence of a commercial partnership, the firm name
 “ is used, or the names of all the partners; in like
 “ transactions after dissolution, the act of the sur-
 “ vivor should show that it was intended to benefit
 “ or bind the firm.

“ Conveyances during the existence of the con-
 “ jugal association by the firm are made by the hus-
 “ band alone and in his name, and those made to the
 “ firm are usually, though not universally, to him
 “ individually. Whatever he does after the death of
 “ his wife in the way of conveying property in pay-
 “ ment of debts, or receiving it to satisfy those due
 “ the community, is done in his own name, and they
 “ are as effectually binding upon her heirs as if they
 “ were joined in the conveyances.

“ So in case of suits by or against partnerships, the
 “ same rule obtains. In commercial partnerships all
 “ the members must be joined; in conjugal the hus-
 “ band only may sue and be sued. After dissolution
 “ the surviving partner sues or is sued as such, and it
 “ must be shown that the debt is a partnership debt
 “ or claim so as to determine out of what property the
 “ judgment shall be satisfied. In this no more is re-
 “ quired than during the existence of the partner-
 “ ship. And so after the death of the wife, the suit,
 “ as during her life, is against him alone, and the
 “ allegations are the same as if the suit had been
 “ brought before her death. The wife was not en-
 “ titled to have notice of the action; her heirs can
 “ claim no such privilege when their interests suc-
 “ ceed to hers. The suit, and the judgment in ac-
 “ cordance with it, are against him alone after the
 “ death of his wife as it was before.

“ There is no difference between a suit upon a com-
 “ munity debt commenced, but when judgment is
 “ not obtained till after her decease, and one when
 “ the suit and judgment both occur subsequently to
 “ her death.

“ No one has ever claimed that in the former case,
 “ at her death, the heirs or administrator of the wife

"should be made parties or the suit would abate. If
 "this is not necessary, no reason can be urged why,
 "in an original suit commenced after her death, they
 "are necessary parties defendant.

"These views lead us to the inevitable conclusion
 "that a judgment thus obtained against the surviving
 "husband is binding upon the community property,
 "and to be enforced against it."

Simmons vs. Blanchard (46 Tex., 266) was a case where the husband and wife settled in a certain colony in the State, and soon thereafter both died. Administration was had only upon the husband's estate. A colony certificate for 640 acres of land, issued in the husband's name, was sold by his administrator as community property. The question was as to the validity and effect of the sale. The court held the sale within the right and power of the administrator, and that if made in due course of administration, would pass the legal title to the certificate and to any land on which it might be located, from the heirs of both husband and wife, though the land had been patented to the heirs of the husband.

Landreaux vs. Louque (43 La. An., 234) was an executory action against a surviving husband alone to foreclose a real estate mortgage given in the lifetime of his wife to secure a community debt. The heirs of the deceased wife were not made parties and, under the local practice, opposition to the sale was interposed in their behalf. The question was whether the foreclosure would pass the title to the wife's interest in the property. The court stated and held as follows:

"Under this state of facts the question for decision
 "is whether the apponents were entitled to notification of the executory proceedings, and could a valid
 "sale of their one-half undivided interest in the common property be made without it.

"It is elementary that the interest of the wife's
 "heirs in the community is only a residuary one and
 "their inheritance is subordinate to the payment of
 "community debts. Succession of Dumestre, 49 An.,

" 411; Factors' & Traders' Insurance Co. *vs.* Levi, 42 An., 432; 33 An., 467, 585; 35 An., 297; 36 An., 157; 38 An., 759; Hen. Dig., p. 1496; Loque's Dig., p. 416.

* * * * *

"It is not easily perceived what reason there can be under the circumstances of this case for making the beneficiary heirs of the deceased member of the insolvent community parties to the executory proceedings, which were taken against the surviving husband alone.

"It is the accepted jurisprudence of this court that such proceedings can be conducted against the surviving husband alone. This principle has been decided specifically in several cases. For instance, it was said by our early predecessors, in *Lawson vs. Ripley*, 17 La., 238, that, after dissolution of a community 'by the death of the husband, it is uniformly understood that his estate is bound to pay the debts contracted during the marriage; if it be dissolved by the death of his wife, the *survivor is generally applied to* for the satisfaction of the community debts; and the wife or her representatives, although their distinct interest to the community attaches at the dissolution of the marriage, subject to their right to renounce and be exonerated from the payment of the community debts, have nothing to claim out of the acquets and gains until such debts are paid or liquidated.'

"This opinion was followed by and quoted as authority for many subsequent cases, and notably in *Baird vs. Lemee*, 23 An., 424.

"In *Hawley, Administrator, vs. Crescent City Bank*, 26 An., 230, the court expressed its unqualified approval of this doctrine."

We cite also: *Hooke's Succession* (46 La. An., 353); *Verrier vs. Loris* (48 La. An., 717); 6 *Am. & Eng. Ency. Law*, p. 342.

It thus appears both from the Spanish law and from adjudicated cases of this country in jurisdictions where the doc-

trine of community property prevails, that to enforce an obligation against the community by sale of real property after death of one or both of the conjugal partners, it is not necessary to make the heirs of the deceased partner or partners parties to the action. So far as this contention is concerned, therefore, there can be no doubt that the sale of the property here in question was legally made.

From the authorities cited and considerations thus far stated, we submit it has been established (1) that the estates of both decedents were legally represented in the executory action, (2) that the Lacalle claim was a just and lawful obligation against both estates, and (3) that the heirs were not necessary parties to the proceeding in which the property in question was sold.

But in addition to this the equities of the case are most obvious and altogether with the appellees. The parties complaining expressly sanctioned the employment of Lacalle by the executor, and with the other heirs they were equally benefited by the services performed. They subsequently acknowledged the claim as a just obligation against both estates, and agreed that the property in question should be sold to pay it (R., 50, 86, 179-180). Nothing was done except what they agreed was right to be done. We submit it would be the height of inequity to grant them the relief they now ask. The situation calls loudly for the application of the doctrine of estoppel and, if necessary, the court should apply it. About the time of the commencement of the present action there was instituted by the same plaintiffs an action to redeem the property sold, but the court dismissed the complaint (R., 62-64, 80-82). In that action it appeared that Rafael Enriquez had, a few days prior to its institution, entered into a contract for the sale of the property for the sum of 45,000 pesos in case he should redeem the same (R., 81, 91-92). The large profits thus in contemplation explain the motive which was the real source of both actions.

IV.

We further contend that in no event could the sale of the property be set aside and annulled in this action. In the first place, the record shows there was a prior lien on the property for about \$10,000, which was paid out of the proceeds of the sale (R., 43, 127, 142, 167), and, though a party to the executory action (R., 131-133), the prior lienor is not a party to this proceeding. Of course he is interested in the result, and by reason thereof is entitled to be heard. Besides, it is an established rule that in actions to annul proceedings in a former suit all parties to the former suit must be made parties to the action for annulment. It was distinctly so held in the case of *Haggerty vs. Phillips* (21 La. An., 729). See *Black on Judgments*, sec. 302.

In the second place, it is well settled that the title acquired by a *bona fide* purchaser at a judicial sale, in proceedings within the court's jurisdiction, is good, notwithstanding there may have been errors or irregularities in the proceedings; and this is so, though the decree or order of sale be subsequently reversed. *Sproule vs. Davies*, 171 N. Y., 277; *Wing vs. Dodge*, 80 Ill., 564; *Phillips vs. Benson*, 85 Ala., 416; *Browning vs. Howard*, 19 Mich., 323; *Edwards vs. Halbert*, 64 Tex., 667; 24 Cyc., 65-66.

In the third place, it is established beyond controversy that Francisco Saez Co-Tiongco purchased the property at the judicial sale in good faith without notice of any irregularity in the proceedings, and that Cho-Jan-Ling purchased from him in good faith without notice of any defect in his title or of the pendency of this action. The trial court so found (R., 44-45), and the record so shows (R., 20-21, 38). It also appears that after the purchase by Cho-Jan-Ling the old theater building on the premises was condemned by the municipal authorities of Manila, and he was required

to remove the same, which he did and at once erected a new building thereon at a cost of about 110,000 pesos (R., 21, 32, 33, 34, 43-44). Some time after the institution of this action a notice of *lis pendens* covering the property was delivered to the Registry of Property (R., 24-25, 177), but the notice was not filed in the Registry until August 23, 1902, after Cho-Jan-Ling had purchased the property and the same had been transferred to him and possession delivered (R., 32-33, 34, 44, 100, 180).

We do not understand these facts to be controverted. They clearly show that both the vendee at the judicial sale and his transferee are innocent purchasers in good faith, without notice of any irregularity in the proceedings or defect in the title, and that, relying upon the title, the present holder has erected permanent improvements of great value on the property, after having been required to remove the old building at unavoidable loss and expense. As innocent purchasers, we submit they are in all good conscience and equity entitled to protection, and that as against them the judicial sale should not be annulled for any reason that here appears.

The trial court held that in view of the facts the present holder could not be deprived of the property in any event unless reimbursed for the purchase money and improvements and for all loss sustained. The Spanish law provides (Civil Code, art. 1303) that—

“When the nullity of an obligation has been declared, the contracting parties shall restore to each other the things which have been the object of the contract with their fruits, and the value with its interest.”

In *Galveston, &c., Ry. Co. vs. Blakeney* (73 Tex., 180) it was held that—

“When a debtor's property is subject to be lawfully sold under judicial process and is sold in an

“illegal manner, the sale may be held void; yet if
 “the debtor sue to recover the property, he can only
 “succeed by proffering to pay the purchase money
 “which has gone to extinguish his debt. This prin-
 “ciple was distinctly announced in *Howard vs.*
 “*North*, 5 Tex., 290, and has been recognized and
 “followed in many subsequent cases.”

Howard vs. North was a suit to recover lands sold at a sheriff's sale. The sale was held void and yet the purchaser was held entitled to have his money refunded as a condition to a recovery of the land.

Allan vs. Pierson (60 Tex., 604) was a suit to set aside a sheriff's sale of real estate made under an execution on a judgment for debt on the ground of alleged irregularities in the proceedings. The court, after stating that the matters at issue were of equitable cognizance and must be determined in accordance with principles of equity and justice administered in courts of chancery, further said:

“One of the cardinal principles lying at the foundation of that system is that ‘he who seeks equity must do equity.’ In applying that wholesome rule courts generally, in effecting even void judicial sales, have required that the purchase price paid should be refunded to the purchaser.

“But here the appellant claims that under his purchase he took possession of the land, and without knowing anything about any suit or intended suit attacking the sale, and without any actual knowledge of any irregularities upon the part of the officer in making the levy, etc., that he in good faith placed permanent and valuable improvements upon the property, which greatly enhances its value. And for the value of which in the event the sale was annulled, he prayed judgment against the appellee.

“If as claimed by the appellant, he, in good faith, placed valuable and permanent improvements upon the land, and being in fact ignorant of the irregu-

"larities of the officer in making the levy, and not
 "knowing anything about any intended suit to con-
 "test the sale, then undoubtedly the court of equity
 "would refuse to annul the sale, except upon the
 "terms that the value of such improvements was paid
 "or secured to the appellant."

In *Robertson vs. Bradford* (72 Ala., 116), it was held as follows:

"There is no principle of law better settled, or
 "resting on wiser considerations of public policy, and
 "higher considerations of justice, than that no per-
 "son, whether *sui juris* or under disability, and the
 "character of the disability, is not of importance,
 "who has received and retains the fruits of a judicial
 "proceeding, can be heard to assail it, either for ir-
 "regularity or illegality, to the prejudice of others
 "who have in good faith relied and acted upon it as
 "valid."

We cite also: *Burns vs. Ledbetter*, 56 Tex., 282; *Walker vs. Lawler*, 45 Tex., 532, 538; *Johnson vs. Caldwell*, 38 Tex., 217; *Harrison vs. Ilger*, 74 Tex., 86.

The appellants have made no offer of reimbursement, and under the circumstances it would be practically impossible, had they done so, to restore the parties to their former status. There are, therefore, no considerations whatever to justify an annulment of the sale.

Finally, we contend that under the Spanish law it is not permissible in this action to attack the sale made in the executory action. The only questions that may be required into are such as relate to the validity of the debt or obligation upon which the executory action was based.

On this subject we refer to the following decisions of the Supreme Tribunal of Spain:

That of March 6, 1891 (Civil Jurisprudence, vol. 69, 313), which holds as follows:

“That the right which article 1477 of the Law of Civil Procedure reserves to the parties to institute an ordinary action against the judgments rendered in executory actions, the article limits to the sole purpose of allowing them to discuss anew and fully the points of the very same question, for which reason it is not allowable to refer the same but to the essential part, that is to say whether or not the debt which served as basis to the execution was true, and therefore was really due; but in no way to the point that in this second action the defects of the title or the mistakes which the first proceeding might have should anew be discussed, for the same should have been discussed and decided therein, or in the remedy of annulment in due form.”

That of December 14, 1891 (Civil Jurisprudence, vol. 70, p. 507), which holds:

“That although, according to article 1477 of the Law of Civil Procedure the judgments rendered in executory actions shall not give rise to the exception of *res adjudicata*, the parties reserving their rights to institute an ordinary action upon the same questions, the later action instituted by the party proceeded against under execution cannot succeed, if the same asks that the judgment of sale entered in the executory action, the annulment of the adjudication of the property sold at auction and the entry in the registry of property, and the declaration of title and its consequences, be made ineffective.”

That of January 20, 1897 (Civil Jurisprudence, vol. 80, p. 116), which holds:

“In accordance with what has been held by the Supreme Tribunal, interpreting the meaning and effect of article 1477 of the Law of Civil Procedure, the right which said article reserves to the parties to institute an ordinary action against the judgments entered in executory actions, the court limits

“the same to the sole object that they might discuss again the same question, that is to say, whether or not the debt which served as basis to the execution was a true one, and was really due; but in no way to the point that in this new action the defects in the title or the mistakes had in the first proceeding are to be discussed, for they should have been discussed and decided therein or in the remedy of annulment in due form.”

Article 1477, referred to by the court, provides as follows:

“Judgments rendered in executory actions shall not give rise to the exception of *res judicata*, the parties reserving their rights to institute an ordinary action upon the same question.”

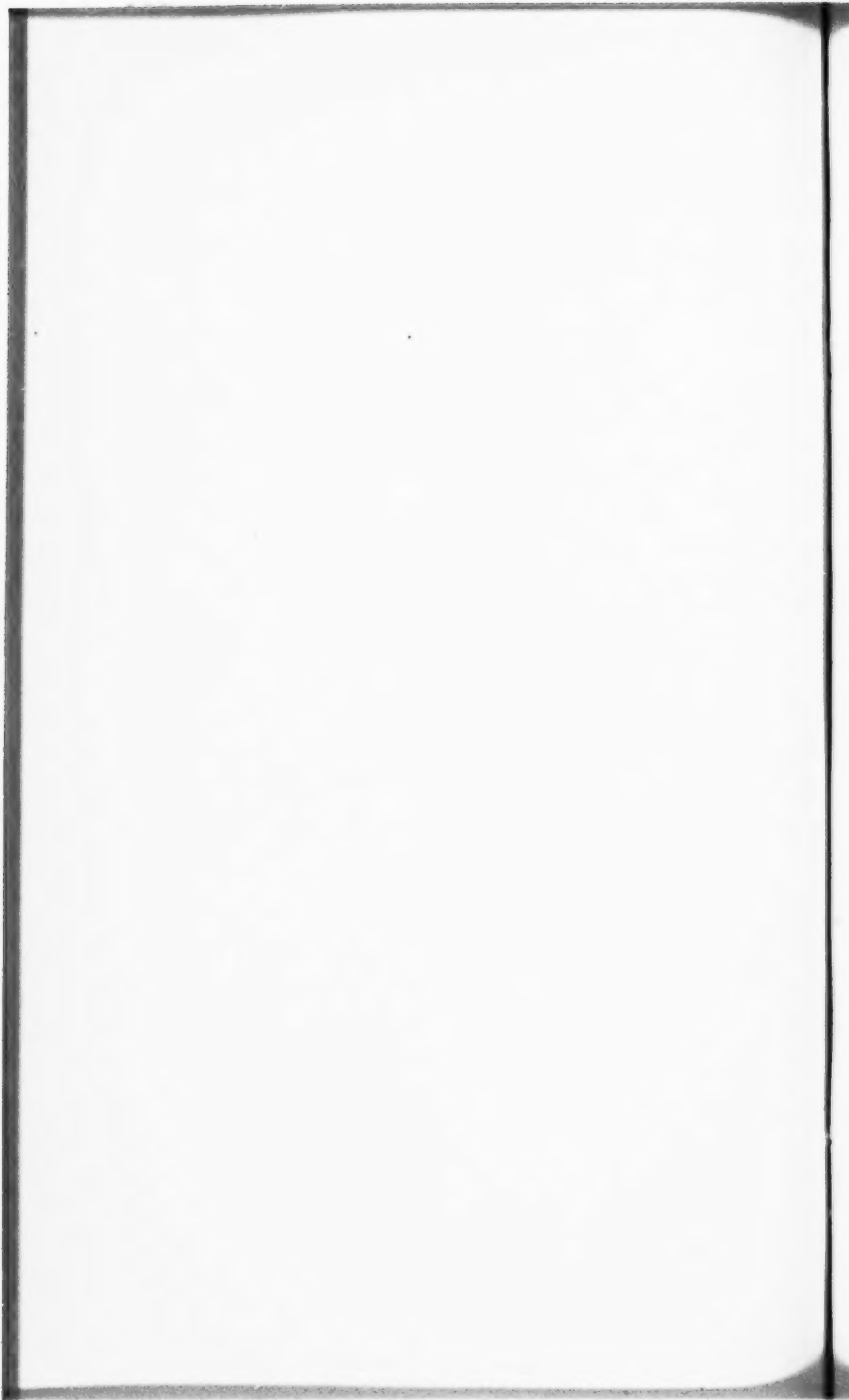
It is not within the contemplation of the Spanish law that any matter other than “the same question” which was the basis of the executory action, namely, the validity of the Lacalle claim, may be regarded as open for reconsideration in this proceeding. The language of the article is plain and its interpretation by the court is clear and convincing. In view thereof the judicial sale of the property in controversy is not here subject to attack.

The argument for the appellants proceeds upon the assumption that while the community property is liable for antecedent debts, the expenses of administration, *i. e.*, services of Senor Lacalle, is not a charge upon the estate. But in all systems of probate such services are allowed and paid from the assets of the estate. In present instance the estate was administered extrajudicially. The executor had the right to incur the obligation which was for the benefit of all the heirs. Moreover, *all* the heirs joined in the agreement and arrangement. How can they now be heard in this action to say otherwise? The value of Senor Lacalle's service is not here challenged nor denied. The obligation to pay is not denied. The single technical claim is that the re-

sponsibility was individual and that the heirs should have been joined in the suit brought by Lacalle to enforce payment. But as the estate was in law bound for such payment, suit against the executor representing the estate was proper and sufficient, as the cases ruled in the supreme tribunal of Spain cited *supra* fully affirm. The agreement for Lacalle's services joined in by all the heirs was binding upon the estate and all parties thereto. In the absence of fraud or imposition (and neither is here alleged), a court of probate—if the estate was administered therein—would recognize such claim and direct payment from the assets of the estate. The executor here hence properly admitted the claim; stated he had no funds from which to pay it, and suggested the sale of this property in order to realize therefrom funds for its payment. This was in exact accord with the agreement of all the heirs theretofore made. No fraud or wrong is imputed in the sale. The property brought more than its officially appraised value, made prior to the sale and in accordance with Spanish procedure. The heirs all obtained the benefit therefrom in the discharge of the existing mortgage upon the property made by their ancestor, and received also into the estate a most substantial sum after payment of the Lacalle judgment. Having thus themselves laid the foundation for the claim and the resulting judgment and sale, they now demand its rescission without offering to do equity in any form with respect to the innocent purchaser and his subsequent grantor. Such a demand is without semblance of justice in any system of judicature.

We submit the judgment should be affirmed.

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Attorneys for Appellees.



APPENDIX.

Civil Jurisprudence.—Cases under jurisdiction and on Appeal for annulment of Judgment, Nullity, and of Manifest Injustice.—1886.—Vol. 59, page 826.

189.

Appeal for annulment of judgment as to form in a matter beyond the sea (*3rd May, 1886*). Third chamber.—*For payment of a sum of money.*—The appeal interposed by Mr. José Pío Mazorra against Mr. Francisco de Paula Xiqués (Appeal Court of Havana,) does not lie, and the following is held:

1st. *That while the property of an estate remains undivided, the legal representation of the same belongs to the executor appointed by the testator, if the latter has conferred on him the necessary powers therefor.*

2nd. *That the execution treated of having been demanded and granted against the property of the succession or estate, and the demand for payment having been made and citation for sale served on the son of the deceased as heir and executor of the same, and holder of the property, there results that these proceedings were had on the person who had the legal representation of the estate proceeded against under execution, inasmuch as it has been justified by the clause of the Will that said appointment of executor was conferred on him, under which capacity he executed the power of attorney in virtue whereof his solicitor appeared in those proceedings, and it does not appear nor has it been attempted to be proved that the solicitor has ceased to act thereunder, or that the estate has been distributed.*

And, 3rd. *That for the reasons above set forth, it is not necessary to cite to the sale the other parties interested in the estate in order to make the action valid, and as this appeal is based on the said lack of citation, it does not lie as the same is not included in number 1 of article 8 of the law of appeal for annulment in civil cases which was in force in Cuba at the time the same was filed.*

In the town and Court of Madrid, on May 3rd, 1886, in the action pending before Us, on appeal for annulment of judgment for violation of form, had in the Court of First Instance of Sagua la Grande and in the Civil Chamber of the Appeal Court of Havana, by Mr. Francisco de Paula Xiqués y Mamos, represented by the Solicitor Mr. Luis Soto and defended by the Counsellor Mr. Antonio Dominguez Alfonso, against Mr. José Pío Mazorra and in his name by the Solicitor Mr. Ildefonso Gutierrez Illana, under the direction of Counsellor Mr. José Espinosa, for the payment of a sum of money.

There resulting that Mr. José Mazorra died in Havana in the year 1860, leaving a Will executed on the 18th day of February prior thereto, wherein he appointed as his executors: his son Mr. José Pío, in the first place, and his (testator's) wife Doña Juana Cairo, in the second place, in said order to exercise said office; empowering each of them in turn to take possession of the property, to make an extra-judicial inventory of the estate, with the assistance and on citation of the other interested parties, and to manage the same and receive the income thereof, performing these acts while the estate was undivided; to collect, receive and pay what was owing, having power to convey, encumber and mortgage whatever might be necessary to satisfy the pending liabilities and which might not be satisfied by the income or products of the estate; extending the year of executorship to them to all the time that they might require.

There resulting that Doña Dolores Suárez Judán de Ovando conveyed by deed of July 5th, 1878, to Mr. Francisco de Paula Xiqués y Ramos the principal sum of \$60,000.00 acknowledged in her favor by the heirs of Mr. José Mazorra affecting 100 caballerias of land of the sugar estate Santa Clara, situate in the jurisdiction of Sagua la Grande, with the right to the purchaser to receive the interest due since December 18th last, which were included in the sale;

There resulting that on presentation of this deed and of the one executing said encumbrance, Mr. Francisco de Paula Xiqués, on August 13th, 1881, filed his complaint in the Court of First Instance of Sagua la Grande, for issue of execution against the property of the Mazorra estate, in order that when demand was made of Mr. José Pío Mazorra, heir and executor holding the property of Mr. José Mazorra, he should pay the sum of 6,000 dollars, to which sum the inter-

est on the amount secured amounts to for the last two years, from the date of the last payment which took place on December 18th, 1878, or in default thereof to attach sufficient property of his to cover the 6,000 dollars in gold, interest and costs:

There resulting that said execution was issued and demand made of Mr. José Pío Mazorra, by order which was served on his son who bears the same name, the attachment of the sugar estate Santa Clara was had, and citation for sale at auction was made which was also done by serving an order:

There resulting that the party proceeded against objected to the execution, setting up the exceptions of novation of contract and agreement or promise not to make demand; alleging, moreover, that all the legal formalities had been as a whole laid aside, inasmuch as the party proceeded against under execution, Mr. José Pío Mazorra, was the only one cited to the sale, and of whom payment had been demanded, notwithstanding the fact that the debtors were several; and the circumstance cannot be taken into account that he was the general attorney in fact of all the rest, because for a long time back Mr. Ramón, Doña Clara or Mr. Andrés Mazorra were not represented by Mr. José Pío, and, apart from this, the death of Mr. Antonio Mazorra had taken place, whose heirs lacked until that event occurred any legal representation; and for all those reasons he asked that the execution be declared null and void, or that decision be made that there was no jurisdiction to enter judgment of sale, with costs to the party asking for the execution:

There resulting that the latter named party objected to the exceptions, alleging that the power of attorney in virtue whereof the party proceeded against under execution acted refuted what was set up, inasmuch as the power of attorney was executed by Mr. José Pío for himself and as testamentary executor of his parents Mr. José Mazorra and Doña Carlota Cairo, and as that status, which he still held, had its effects in the proceedings so long as it was not justified that they had ceased to exist, it was to be considered that said office carried as appurtenant thereto the obligation to represent the heirs, the fact that one of them had departed this life being no objection therto, for the executor represented the juridical entity of the estate, and in that regard the representation is made extensive to all persons who were heirs to that inheritance:

There resulting that the Judge of First Instance having rendered judgment of sale, establishing among other bases thereto the fact that the party asking for the execution had proved the status of Mr. José Pío Mazorra as lawful representative of the estate of Mr. José Mazorra, having sufficient powers to pay the sums of money claimed by plaintiff, the party proceeded against under execution appealed, and in the second instance requested that the defect be remedied, which, as he understood, existed by the fact of having cited to the sale only himself, individually and as testamentary executor of his father, when all the other heirs of the latter should have been cited, filing for said purpose the proper protest for the effects of article 1013 of the law of Civil Procedure:

There resulting that the party asking for the execution attacked this pretension, because it appeared from the will of the father of the party proceeded against under execution, that the former had conferred on the latter powers, as much for this purpose, as well as for matters of greater import, and, moreover, because he opposed his very acts, because he had appeared in the proceedings acting for himself and as testamentary executor of his father, acknowledging by that very act that such status gave him standing to represent the rights of the estate, and which pretension being denied, the Civil Chamber of the Havana Appeal Court confirmed, with costs, on August 7, 1885, the judgment of sale appealed from:

There resulting that Mr. José Pío Mazorra filed an appeal against this decision, asking for annulment of the same for violation of form, which he based on the first subdivision of article 8th of the law of Appeal for Annulment, because Mr. Justo, Mr. Ramón, Mr. Andrés and Doña Clara Mazorra, and the heirs of Mr. Antonio of the same family name (debtors of the party asking for the execution and who should have been cited), were not cited; for the petitioner was only one of the debtors, under which sole status he could have been cited to the sale, and not as testamentary executor which was wrongly imputed to him, especially because it had not been established in the proceedings that an estate existed and that he had managed property in such capacity.

On reading, the judge reading the decision being Justice José María Manresa:

Whereas, while the property of an estate remains undivided, the legal representation of the same belongs to the

executor appointed by the testator, if the latter has conferred on him the necessary powers therefor:

Whereas, Mr. José Pío Mazorra had clothed himself with these powers as executor of his father, as the latter empowered him to take possession as such of the property managed and to receive its income while the estate remained undivided, and to collect and pay what was owing, selling or mortgaging whatever might be necessary for this purpose, with an indefinite extension of the legal period of executorship:

Whereas, the execution treated of was asked for and issued against the property of the estate or succession of Mr. José Mazorra, and the demand for payment having been made and citation of sale served on his son Mr. José Pío in his status of heir and executor of the same and holder of the property, these proceedings appear to have been had against the person who has the lawful representation of the estate proceeded against under execution, inasmuch as with the clause of the will it has been proved that said office of executor was conferred on him, in which capacity he executed the power of attorney under which his solicitor appeared in these proceedings, and it does not appear nor has it been attempted to be proved that the latter has ceased to act thereunder, or that the estate has been distributed:

Whereas, for the reasons set forth it is not necessary to cite to the sale the other parties interested in the estate of Mr. José Mazorra, in order to make the action valid; and this appeal being based on said lack of citation, the appeal does not lie because it is not included in number 1 of article 8 of the Law of Appeal for Annulment in civil cases invoked by the appellant, and which was in force in Cuba when he interposed it;

We hold that we should decide, and hereby do decide, that the remedy of appeal for annulment interposed by Mr. José Pío Mazorra, does not lie, and we adjudge him, by reason of the deposit, to pay the sum of 1,250 pesetas which he shall pay when in better circumstances, the same to be distributed then according to law, and costs; and let the proper certificate be issued to the Appeal Court of Havana, and the papers in the case be returned. (Decision published on May 3, 1886, and inserted in the Gaceta of June 4 of the same year.)